No. 24-249

IN THE

Supreme Court of the United States

A.J.T., BY AND THROUGH HER PARENTS, A.T. & G.T.,

Petitioner,

—v.—

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 279, OSSEO SCHOOL BOARD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR *AMICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, NATIONAL CENTER FOR YOUTH LAW, NATIONAL DISABILITY RIGHTS NETWORK, LEARNING RIGHTS LAW CENTER AND EDUCATION LAW CENTER, IN SUPPORT OF PETITIONER

ELLEN SAIDEMAN
LAW OFFICE OF
ELLEN SAIDEMAN
7 Henry Drive
Barrington, Rhode Island 02806
(401) 258-7276
esaideman@yahoo.com

SELENE ALMAZAN-ALTOBELLI
Counsel of Record
COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.
PO Box 6767
Towson, Maryland 21285
(844) 426-7224
selene@copaa.org

Counsel for Amici Curiae

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 5

ARGUMENT 7

I. PURSUANT TO ITS AUTHORITY UNDER 28 U.S.C. § 517, THE UNITED STATES OF AMERICA HAS DETAILED ITS VIEW THAT REQUIRING CHILDREN WITH DISABILITIES TO MEET A DIFFERENT AND HIGHER STANDARD OF INTENT THAN OTHER PLAINTIFFS IS CONTRARY TO THE TEXT, STRUCTURE, AND PURPOSE OF BOTH SECTION 504 AND ADA 7

II. THE INTENT REQUIREMENT IN *MONAHAN* CONFLICTS WITH THE SUPREME COURT'S INTERPRETATION OF THE PLAIN LANGUAGE OF THE HCPA 8

III. IMPOSITION OF AN INTENT STANDARD IS INCONSISTENT WITH THE STATUTORY PURPOSE OF THE ADA AND SECTION 504 12

PAGE

IV. THE GROSS MISJUDGMENT STANDARD BARS CLAIMS FOR PUBLIC SCHOOL STUDENTS THAT ARE AVAILABLE TO COLLEGE AND GRADUATE STUDENTS AND OTHERS 15

CONCLUSION 17

TABLE OF AUTHORITIES

PAGE(S)

Cases

A.J.T. v. Osseo Area Schools,
96 F.4th 1058 (8th Cir. 2024) 6, 8, 9, 11, 15

Ability Ctr. of Greater Toledo v. City of Sandusky,
385 F.3d 901 (6th Cir. 2004) 12, 14

Adams v. Montgomery College (Rockville),
834 F Supp. 2d 386 (D. Md. 2011) 16

Alexander v. Choate,
469 U.S. 287 (1985) 12

Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy,
548 U.S. 291 (2006) 2

Bd. of Educ. v. Tom F.,
552 U.S. 1 (2007). 2

Childress v. Fox Associates,
932 F.3d 1165 (8th Cir. 2019) 14, 15

Conquest Communications Group, LLC v. Swanson,
866 F.3d 853 (8th Cir. 2017) 11

D. D. v. L. A. Unified Sch. Dist.,
143 S. Ct. 1081 (2023) 3

Endrew F. v. Douglas County School District. RE-1,
580 U.S. 386 (2017) 2

Forest Grove School District v. T.A.,
557 U.S. 230 (2009) 2

Fry v. Napoleon Cmty. Schs.,
580 U.S. 154 (2017) 1, 2, 5, 9, 11

PAGE(S)

Girard v. Lincoln College of New England,
27 F. Supp. 3d 289 (D.Conn. 2014) 16, 17

Helen L. v. DiDario,
46 F.3d 325 (3d Cir. 1995) 14

Henrietta D. v. Giuliani,
199 F. Supp.2d 181 (S.D.N.Y. 2000) 14

Henson v. Santander Consumer USA, Inc.,
582 U.S. 79 (2017) 6

Knox Cnty. v. M.Q.,
62 F.4th 978 (6th Cir. 2023) 13, 14

Loeffler v. Staten Island University Hospital,
582 F.3d 268 (2d Cir. 2009) 16

Mills v. Bd. of Educ.,
348 F. Supp. 866 (D.D.C. 1972) 5

Monahan v. Nebraska,
687 F.2d 1164 (8th Cir. 1982) 6, 7, 8, 9, 10, 11, 12, 13

Nat'l Fed'n of the Blind v. Lamone,
813 F.3d 494 (4th Cir. 2016) 14

Pa. Ass'n for Retarded Children v. Pennsylvania,
343 F. Supp. 279 (E.D. Pa. 1972) 5

Perez v. Sturgis Public Schools,
598 U.S. 142 (2023) 2, 3, 6, 11

Proctor v. Prince George's Hosp. Ctr.,
32 F. Supp. 2d 829 (D. Md. 1998) 16

Robertson v. District of Columbia,
No. 1:24-cv-00656-PLF (D.D.C. Sept. 30, 2024) . . . 6

PAGE(S)

Schaffer v. Weast,
546 U.S. 49 (2005). 2

Segev v Lynn Univ.,
No. 19-81252-Civ-Cannon, 2021 WL 1996437,
2021 U.S. Dist. LEXIS 94620
(S.D. Fla. May 19, 2021) 17

Smith v. Robinson,
468 U.S. 992 (1984) 9, 10, 11, 13

Washington v. Ind. High Sch. Athletic Ass'n, Inc.,
181 F.3d 840 (7th Cir. 1999) 14

Winkelman v. Parma City Sch. Dist.,
550 U.S. 516 (2007) 2

Statutes

20 U.S.C. § 1400, *et seq.*, Individuals with
Disabilities Education Act ("IDEA") . . 1, 2, 3, 4, 5,
6, 8, 9, 10, 11, 13, 17

28 U.S.C. § 517 7

29 U.S.C. § 794, Section 504 of the Rehabilitation
Act of 1973 ("Section 504") . . . 1, 3, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 17

42 U.S.C. § 1983 . . . . 1, 9, 10

42 U.S.C. § 12101, *et seq.*, Americans with
Disabilities Act ("ADA") . . . 2, 3, 4, 5, 6, 7, 8, 9, 11,
12, 13, 14, 15, 17

Civil Rights Act of 1871, ch. 22, 17 Stat. 13
(codified as amended at 42 U.S.C. §1983) 1

PAGE(S)

Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, 100 Stat. 796 (codified at 20 U.S.C. § 1415(*l*) of IDEA) 6, 7, 8, 9, 10, 11, 12, 13

Regulations

28 C.F.R. § 35.130(b)(7) 12

Rules

Supreme Court Rule 37.6 1

Other Authorities

H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985) . . . 10

H.R. 6014, 98th Cong., 2d Sess., 130 Cong. Rec. H7688 (daily ed. July 24, 1984) 10

Mark C. Weber, *Accidentally on Purpose: Intent in Disability Discrimination Law,* 56 Boston Coll. L. Rev. 1417 (2015) 12, 14

Myron Schreck, Attorneys' Fees for Administrative Proceedings Under the Education of the Handicapped Act: of Carey, Crest Street and Congressional Intent, 60 Temple L.Q. 599 (1987) 10

Rosalie Berger Levinson, *Misinterpreting the Sounds of Silence: Why Courts Should Not Imply the Preclusion of Constitutional Claims*, 77 Fordham L. Rev. 775 (2008) 10

S. Rep. No. 112, 99th Cong., 1st Sess. 2, 15 (1985) 10

PAGE(S)

S. 2859, 98th Cong., 2d Sess., 130 Cong. Rec. S. 9078 (daily ed. July 24, 1984) 10

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization for parents of children with disabilities, their attorneys and advocates. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA does not represent children but provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*[2] Our attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §1983), Section 504 of the

---

[1] Pursuant to Rule 37.6, the undersigned certifies that: (i) there is no party or counsel for a party who authored the *Amici Curiae* brief in whole or in part; (ii) there is no party or counsel for a party who contributed money that was intended to fund preparing or submitting the brief; and (iii) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members. Counsel of record notified counsel of the filing of this *amici curiae* brief.

[2] The statute was originally named the Education of the Handicapped Act or EHA; it was renamed IDEA in 1990. *See Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 n.1 (2017). For the sake of simplicity, we refer only to IDEA to refer to both IDEA and its predecessor EHA.

Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*. (ADA).

COPAA brings to the Court the unique perspective of parents and advocates for children with disabilities. COPAA has often filed as *amicus curiae* in the United States Supreme Court, including *Perez v. Sturgis Public Schools,* 598 U.S. 142 (2023); *Endrew F. v. Douglas County School District. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007); *Bd. of Educ. v. Tom F.*, 552 U.S. 1 (2007); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006); and *Schaffer v. Weast*, 546 U.S. 49 (2005); and in numerous cases in the United States Courts of Appeal.

Founded in 1973, Education Law Center (ELC) is a non-profit legal defense fund that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. ELC has served as counsel in special education cases in the Third Circuit Court of Appeals, the District of New Jersey and Eastern District of Michigan, and has participated as *amicus curiae* in special education cases before the United States Supreme Court and the Third and Sixth Circuit Courts of Appeals. Over the past twenty-five years, ELC has developed substantial interest and expertise in the legal rights of students with disabilities and ensuring that those rights are protected under IDEA and other applicable civil rights and non-discrimination laws.

Learning Rights Law Center (LRLC) is a nonprofit legal services organization that fights to achieve educational equity for underserved families whose children, because of disability or discrimination, have been denied equal access to a public education. LRLC achieves this aim by providing free legal advice, advocacy, and training to families of students with disabilities in Los Angeles and surrounding counties. LRLC's work includes filing systemic education litigation against California School Districts including to address violations of Section 504, the ADA, and the IDEA. This work included LRLC filing as *amicus curiae* in *Perez* and representation of Student in *D. D. v. L. A. Unified Sch. Dist.,* 143 S. Ct. 1081 (2023), which followed on the heels of the Court's decision in *Perez.* Over 20 years representing hundreds of children, LRLC has gained intimate knowledge of the difficulties faced by students with disabilities when facing discrimination in education and has a vested interest in ensuring that their rights are protected.

The National Center for Youth Law (NCYL) is a non-profit organization that works to build a future in which every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. For over 50 years, NCYL has worked to protect the rights of children, promote their healthy development, and ensure that they have the knowledge, skills, resources, agency, and decision-making power to achieve their goals. NCYL provides representation to children with disabilities and children of color in litigation and class administrative complaints to ensure their access to appropriate and non-discriminatory services. NCYL engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their

lives. NCYL also pilots collaborative reforms with state and local jurisdictions across the nation to improve educational outcomes of children in the foster care and juvenile justice systems, with a particular focus on improving education for system-involved children with disabilities.

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

Many of these children experience significant challenges, but can thrive and succeed with appropriate services, accommodations and modifications. Their success depends not only on the right to secure the IDEA's guarantee of a FAPE, but also upon the right to be free of unlawful discrimination in violation of the ADA and Section 504, whether or not they receive special education. *Amici's* interest in this case stems from their commitment to ensuring that students with disabilities are protected from unlawful discrimination

and have access to protection from discrimination under the ADA and Section 504, independent of their rights under IDEA to special education and related services.

SUMMARY OF ARGUMENT

For students with disabilities, federal law rooted in the Constitution provides an umbrella of protections that protects their access to education and its benefits, and also provides them with the right to be free from discrimination on the basis of disability. [3] IDEA "offers federal funds to States in exchange for a commitment to furnish a 'free appropriate public education' – more concisely known as FAPE- to all children with certain physical or intellectual disabilities." *Fry*, 580 U.S. at 157. Thus, IDEA provides eligible students with a "substantive right" to special education and related services. *Id.* Congress also enacted separate and distinct statutes, notably Section 504 and Title II of the ADA, that bar public schools from discriminating against students on account of their disabilities, regardless of whether such discrimination deprives the students of FAPE. These statutes provide valid, standalone legal claims to be protected from unlawful discrimination separate and apart from IDEA's right to FAPE.

Under the ADA and Section 504, public school students have the same right to be free from discrimination as other individuals with disabilities. However, for Section 504 and ADA, the underlying decision undermines that equal right for students

---

[3] *See Mills v. Bd. of Educ.*, 348 F. Supp. 866 (D.D.C. 1972), *Pa. Ass'n for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972).

whose claims are based on a failure to accommodate them. The Eighth Circuit's *A.J.T.* panel relied on a standard, "bad faith or gross misjudgment" when evaluating failure to accommodate claims for students who were deprived of educational services. In doing so, the Eighth Circuit followed *Monahan v. Nebraska,* 687 F.2d 1164 (8th Cir. 1982), *A.J.T. v. Osseo Area Schools*, 96 F.4th 1058, 1061 (8th Cir. 2024).

The reality is that Congress subsequently "rejected *Monahan*'s premise just a few years later" in enacting the Handicapped Children's Protection Act of 1986 (HCPA), Pub. L. No. 99-372, 100 Stat. 796 (codified at 20 U.S.C. § 1415(*l*) of IDEA). *Id.* at 1061, n.2. Despite this amended statute and this Court's teachings in both *Fry* and *Perez*, the Eighth Circuit has continued to apply *Monahan*'s unsupportable interpretation of Section 504 and the ADA. *Id.* But, as the United States Attorney wrote this week in filing a Statement of Interest: "courts are not empowered to rewrite a statute to require an element of bad faith or gross misjudgment that Congress did not impose." Statement of Interest of the United States of America, at 13, *Robertson v. District of Columbia*, No. 1:24-cv-00656-PLF (D.D.C. Sept. 30, 2024), ECF 62.

Contrary to the reasoning of the *A.J.T.* panel and *Monahan*, this Court has instead made clear that IDEA should be interpreted to "comport[] with the statute's terms." *Perez*, 509 U.S. at 147. This Court stated that it was its "job to apply faithfully the law Congress has written," and "[w]e cannot replace the actual text with speculation as to Congress' intent." *Id.* at 150, quoting *Henson v. Santander Consumer USA, Inc.*, 582 U.S. 79, 89 (2017). As *Perez* makes clear that IDEA's text provides the same protections for students with disabilities in public school as all

individuals with disabilities in other settings, this Court should grant certiorari to overrule *Monahan's* application of a bad faith or gross misjudgment standard to educational discrimination claims.

ARGUMENT

I. PURSUANT TO ITS AUTHORITY UNDER 28 U.S.C. § 517, THE UNITED STATES OF AMERICA HAS DETAILED ITS VIEW THAT REQUIRING CHILDREN WITH DISABILITIES TO MEET A DIFFERENT AND HIGHER STANDARD OF INTENT THAN OTHER PLAINTIFFS IS CONTRARY TO THE TEXT, STRUCTURE, AND PURPOSE OF BOTH SECTION 504 AND ADA

Just this week, the United States filed a Statement of Interest in the United States District Court of the District of Columbia to oppose the school district's argument that a child with a disability should be required to show bad faith or gross misjudgment to establish liability under Section 504 and the ADA. The United States explained that such a requirement "is inconsistent with the text, structure, and purpose of those statutes." Statement of Interest, at 5. The United States points out this atextual standard originated in *Monahan* more than 40 years ago and "in any event has been superseded by statute." *Id.* at 6. The *Monahan* decision, incorrectly decided, predates the ADA as well as the enactment of 1415(*l*). *Id.*

Paying careful attention to the text of the statute, the United States notes that "[t]he words 'bad faith' and 'gross misjudgment' appear nowhere within the text of either Title II or Section 504." *Id.* at 5. It

further observes that "neither Title II nor Section 504 sets aside education-related claims brought by children with disabilities as claims that should be treated differently—and more harshly—than any other brought under either statute." *Id.* at 5-6. Thus, statutory interpretation principles bar courts from "rewrit[ing] a statute to require an element of bad faith or gross misjudgment that Congress did not impose." *Id.* at 9. The United States also noted that there is a circuit split on this issue and that the Third and Ninth Circuits apply the correct standard, applying "the same standards of liability for violations of Title II and Section 504 for all litigants – including students with disabilities—and do not require bad faith or gross misjudgment under either statute." *Id.* at 6 n.3, 9-10.

Moreover, the United States stresses that requiring a showing of bad faith or gross misjudgment for children with disabilities in the education context undermines the purpose of ADA and Section 504. *Id.* at 10-11.

This recent Statement of Interest of the United States establishes that the United States shares the views of *Amici* that the Eighth Circuit's decision in *Monahan*, relied on by the Eighth Circuit below, "was incorrectly decided, and in any event has been superseded by statute." *Id.* at 6.

II. THE INTENT REQUIREMENT IN *MONAHAN* CONFLICTS WITH THE SUPREME COURT'S INTERPRETATION OF THE PLAIN LANGUAGE OF THE HCPA

As the *A.J.T.* opinion recognized, *Monahan* "speculated that Congress intended the IDEA's predecessor to limit Section 504's protections, and

without any anchor in statutory text added a judicial gloss on Section 504 to achieve that end." *A.J.T.* at 1061, n.2. This Court cited *Monahan* favorably in *Smith v. Robinson*, 468 U.S. 992, 1014, n. 17 & 1020, n.24 (1984). In *Smith,* this Court held that IDEA was "the exclusive avenue through which a plaintiff may assert an equal protection claim to a publicly financed education." *Id.* at 1009. *Smith* held that the EHA pre-empted any claim to attorney's fees because the EHA did not contain a fee provision. Furthermore, *Smith* held EHA precluded students eligible for special education from enforcing their civil rights under Section 1983 or Section 504. *Id.* at 1013, 1021. Dissenting in *Smith*, Justice Brennan called on Congress to rectify the situation, noting: "It is at best ironic that the Court has managed to impose this burden on [children with disabilities] in the course of interpreting a statute wholly intended to promote the educational rights of those children." 468 U.S. at 103. Congress heeded that call and amended the statute.

As this Court has noted, "Congress was quick to respond" to *Smith*. *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 161 (2017). Congress "overturned *Smith*'s preclusion of non-IDEA claims while also adding a carefully defined exhaustion requirement." *Id.* The HCPA "makes clear that nothing in the IDEA 'restrict[s] or limit[s] the rights [or] remedies' that other federal laws, including antidiscrimination statutes, confer on children with disabilities." *Id.* at 157. The HCPA, 20 U.S.C. § 1415(*l*), provides, in relevant part: "Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under" the ADA, Section 504, "or other Federal laws protecting the rights of children with disabilities. . . ."

The text of 20 USC §1415(*l*) has particular significance in this case because the Eighth Circuit relied entirely on *Monahan*, which was decided nearly four years prior to the enactment of the HCPA. Just as the HCPA overturned *Smith*, it also overturned *Monahan* and other court decisions that denied students with disabilities their full rights under Section 504, and other federal civil rights laws.

"Congress apparently agreed that the Court had misconstrued its intent, and it responded swiftly by enacting the [HCPA] . . . thus, in essence, overturning the *Smith* holding." Rosalie Berger Levinson, *Misinterpreting the Sounds of Silence: Why Courts Should Not Imply the Preclusion of Constitutional Claims*, 77 Fordham L. Rev. 775, 785-86 (2008).

Indeed, the Court decided *Smith* on July 5, 1984, and the House and Senate bills to remedy the *Smith* ruling were both introduced before the end of July 1984. Myron Schreck, *Attorneys' Fees for Administrative Proceedings Under the Education of the Handicapped Act: of Carey, Crest Street and Congressional Intent*, 60 Temple L.Q. 599. 612 n.91(1987) (citing S. 2859, 98th Cong., 2d Sess., 130 Cong. Rec. S. 9078 (daily ed. July 24, 1984); H.R. 6014, 98th Cong., 2d Sess., 130 Cong. Rec. H7688 (daily ed. July 24, 1984). Section 1415(*l*) was intended to "reaffirm . . . the viability of [S]ection 504, 42 U.S.C. 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children." H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985) (House Report) (explaining goal of overruling *Smith*); *id.* at 6-7 (same); S. Rep. No. 112, 99th Cong., 1st Sess. 2, 15 (1985) (Senate Report) (same).

Monahan is contrary to the text of IDEA, which specifically states "Nothing in [the IDEA] shall be

construed to restrict or limit the rights, procedures, and remedies available under . . . title V of the Rehabilitation Act . . ." Clearly, employing a higher standard, of bad faith or gross misjudgment, only for students with disabilities in elementary and secondary education "restrict[s] or limit[s] the rights, procedures and remedies available under . . . [Section 504]" for students with disabilities. As such, like *Smith*, *Monahan* was overturned with the passage of the HCPA.

Monahan also conflicts with *Perez v. Sturgis Public Schools*, *supra*. In *Perez*, the Supreme Court applied a textualist approach to Section 1415(*l*). It is wholly inconsistent with Section 1415(*l*), as interpreted by *Perez*, to impose an intent requirement found nowhere in either Section 504 or the ADA restricting the rights, procedures, and remedies available to IDEA-eligible students to seek relief under other federal statutes. To the extent the Eighth Circuit's precedent supports imposition of any intent standard merely because the case involves students protected by IDEA, *Perez* and *Fry* have superseded it. *See Conquest Communications Group, LLC v. Swanson*, 866 F.3d 853, 855 (8th Cir. 2017) (noting that Circuit precedent controls a subsequent panel "unless an intervening Supreme Court decision has superseded it").

As the *A.J.T.* panel recognized, Section 1415(*l*) "rejected *Monahan*'s premise." 96 F.4th at 1061 n.2. *Monahan*'s requirement of bad faith or gross misjudgment before a student served under IDEA can bring a claim of any kind under Section 504 and the ADA must be rejected as inconsistent with the text of IDEA and contrary to the Supreme Court's interpretation in both *Fry* and *Perez.*

III. IMPOSITION OF AN INTENT STANDARD IS INCONSISTENT WITH THE STATUTORY PURPOSE OF THE ADA AND SECTION 504

"[M]uch of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the law construed to proscribe only conduct fueled by a discriminatory intent." *Alexander v. Choate*, 469 U.S. 287, 296 (1985). "There is no hint in Section 504 or the ADA that reasonable accommodation claims are to be treated differently in elementary and secondary education cases," apart from the Section 1415(*l*) exhaustion requirement. Mark C. Weber, *Accidentally on Purpose: Intent in Disability Discrimination Law,* 56 Boston Coll. L. Rev. 1417, 1461 (2015). For example, the ADA regulations describe a public entity's provision of reasonable modifications as sometimes necessary to avoid discrimination, without any mention of intentional discrimination Furthermore, the ADA regulations state directly that a plaintiff may recover on a reasonable modification claim without proving intentional discrimination: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

Monahan itself is a strange authority to rely upon to impose an intent requirement, found nowhere in the statute, that would bar a student's case alleging denial of reasonable accommodations. The *Monahan* plaintiff challenged the impartiality of a procedure for administrative appeals in special

education cases which no longer existed at the time of the decision. The opinion seized upon the intent standard in the same futile attempt to eliminate any overlap of special education law and discrimination law, as *Smith v. Robinson* did. The court had no need to expound on bad faith and gross misjudgment to decide that consequential damages were not an appropriate remedy. Significantly, the claims in *Monahan* were based on a state law that conflicted with the newly passed federal law (EHA/IDEA) and then changed to comply with the new federal law, rendering the issues moot. Indeed, the court admitted that its comments were "guidance," and not essential to the result, and therefore only dicta. 687 F.2d at 1170.

Applying an intent standard to an individual's claim *because* she has an Individualized Education Program (IEP) violates IDEA. Section 1415(*l*) expressly contemplates that aggrieved parties may invoke other statutes – including Title II of the ADA and Section 504 of the Rehabilitation Act – to secure relief for a violation of those statutes. *Knox Cnty. v. M.Q.*, 62 F.4th 978 (6th Cir. 2023), recognized that "outside of the education context, the ADA unequivocally *does not* limit its protections to instances of intentional discrimination, but instead extends to cases involving decision making that unintentionally results in exclusion as well." *Id.* at 1002 (citing *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 904-913 (6th Cir. 2004)). It is "hard to square a standard requiring bad faith or gross misjudgment, in all cases involving students' educational rights, with statutory

protection that reaches even the unintentional denial of services." *Id.*[4]

In non-special education cases, courts have routinely recognized that Section 504 and the ADA do not require victims to show discriminatory intent in order to prevail. *See, e.g.*, *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 510 (4th Cir. 2016) ("Our conclusions here are not driven by concern that defendants are manipulating the election apparatus intentionally to discriminate against individuals with disabilities; our conclusions simply flow from the basic promise of equality . . . that animates the ADA"); *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 912 (6th Cir. 2004) ("Title II reaches beyond prohibiting merely intentional discrimination"); *Washington v. Ind. High Sch. Athletic Ass'n, Inc.*, 181 F.3d 840, 846 (7th Cir. 1999) (rejecting the suggestion that liability under ADA Title II "must be premised on an intent to discriminate on the basis of disability"); *Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995) (ADA and Section 504 sought to eliminate discrimination based on thoughtlessness and indifference); *Henrietta D. v. Giuliani*, 199 F. Supp.2d 181, 206 (S.D.N.Y. 2000) (government's motive or intent irrelevant to 504/ADA claims); Weber, 56 Boston Coll. L. Rev. at 1448.

Even in the Eighth Circuit, no showing of intent has been necessary for other plaintiffs to show discrimination in violation of the ADA: *Childress v. Fox Associates,* 932 F.3d 1165 (8th Cir. 2019), it held that a theatre denied meaningful access to individuals with hearing impairments when it scheduled

---

[4] *Knox County* questioned the "bad faith or gross misjudgment" standard but did not rule on it, finding that the plaintiff had failed to demonstrate any form of discrimination. 62 F.4th at 1002.

captioned performances only during a Saturday matinee time slot. Thus, individuals with hearing impairments could not, "like their hearing-enabled counterparts, attend the theater during the week or in the evening. This excludes individuals with hearing impairments from 'the economic and social mainstream of American life[,]' perpetuating the discrimination the ADA sought to address." *Id.* at 1171. Because "Fox's one-captioned-performance policy denies persons with hearing impairments an equal opportunity to gain the same benefit as persons without hearing impairments, . . . deaf and hard-of-hearing individuals [did] not have meaningful access to the benefits the Fox provides." *Id.* The *Childress* court did not require any showing of intent, much less bad faith or gross misjudgment. In contrast to *Childress,* the *A.J.T.* opinion thus compounds the discrimination experienced by school-aged individuals with disabilities in their schools by requiring these students to prove *more* than any other disability discrimination plaintiff.

IV. THE GROSS MISJUDGMENT STANDARD BARS CLAIMS FOR PUBLIC SCHOOL STUDENTS THAT ARE AVAILABLE TO COLLEGE AND GRADUATE STUDENTS AND OTHERS

The *A.J.T.* court recognized that its addition of the uniquely tough gross misjudgment standard to the statutory requirement of the ADA and Section 504 bars the student's claim although the district may have been deliberately indifferent in denying her a reasonable accommodation made available by a prior school district simply because of staffing concerns irrelevant to the student's educational needs. A review of reasonable accommodation cases involving

college and graduate school students shows that these students were only required to prove that their schools acted with deliberate indifference; none of their claims were required to survive the gross misjudgment test used in this case.

Thus, in *Adams v. Montgomery College (Rockville)*, 834 F Supp. 2d 386, 394 (D. Md. 2011), the court held that school officials demonstrate deliberate indifference when they have notice "of the potential risk of their decision, and clearly [refuse] the accommodation knowingly." *Quoting Proctor v. Prince George's Hosp. Ctr.*, 32 F. Supp. 2d 829, 829 (D. Md. 1998). The court found that the plaintiff, who had a mobility impairment, had stated a claim that the school officials were deliberately indifferent by refusing to provide her with a ride when the school did not have sufficient handicapped parking and had a campus shuttle that was not accessible for individuals with disabilities. *Id*. at 388, 394-95.

Further, in *Girard v. Lincoln College of New England,* 27 F. Supp. 3d 289 (D.Conn. 2014), a student with an auditory processing disorder was allowed to pursue a 504 claim for damages because her college had not provided her with a distraction free test environment that the school had agreed to provide. The court applied the Second Circuit test for deliberate indifference, requiring"[a]n official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf ha[ve] actual knowledge of discrimination in the recipient's programs and fail[] to adequately respond." *Id*. at 299, *quoting Loeffler v. Staten Island University Hospital*, 582 F.3d 268, 275 (2d Cir. 2009). The court found that there was enough evidence to permit a jury to conclude that school officials "were aware that the accommodations fell short of

guaranteeing Plaintiff a quiet test-taking environment, and did not do enough to address the problem." *Id*. at 300.

In *Segev v Lynn Univ*., No. 19-81252-Civ-Cannon, 2021 WL 1996437, 2021 U.S. Dist. LEXIS 94620 (S.D. Fla. May 19, 2021), the court held that a college's failure to provide a student with Asperger's Syndrome, Dyslexia, Dysgraphia, and ADHD with reasonable accommodations for more than four months and was sufficient to show that the school officials acted with deliberate indifference.

The same standard should apply to all individuals with disabilities, whether their discrimination claims are against schools, the K-12 setting college/graduate schools, or other public entities (ADA Title II), public accommodations (ADA Title III), or recipients of federal funds (Section 504).

CONCLUSION

For all the reasons set forth above, the decision of the Court of Appeals for the Eighth Circuit is incorrect, contrary to the text of IDEA, and undermines Section 504 and the ADA, to the significant detriment of children with disabilities. For this reason, *Amici* respectfully request that this Court grant certiorari and reverse the decision below.

Dated: October 3, 2024

Respectfully submitted,

s/ Selene A. Almazan-Altobelli
SELENE A. ALMAZAN-
ALTOBELLI
Legal Director
COUNCIL OF PARENT
ATTORNEYS AND ADVOCATES
P.O. Box 6767
Towson, MD 21285
selene@copaa.org
844.426.7224

/s/ Ellen Marjorie Saideman
ELLEN MARJORIE SAIDEMAN
Law Office of Ellen Saideman
7 Henry Drive
Barrington, RI 02806
esaideman@yahoo.com
(401) 258-7276

Counsel for Amici Curiae