No. 24-249

# In the Supreme Court of the United States

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

## SUPPLEMENTAL BRIEF FOR PETITIONER


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**STATUTES**

## SUPPLEMENTAL BRIEF

Petitioner A.J.T. (Ava) submits this supplemental brief pursuant to Rule 15.8 to advise the Court of a statement of interest filed by the United States in *Crystal Robertson, et al. v. District of Columbia* ("*Robertson*"), No. 24-0656 (D.D.C.), which directly addresses the question presented in Ava's pending petition for certiorari. *See* Add.1a-19a. The United States has now formally taken the position that Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Rehabilitation Act) do *not* require children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education. *Id.* The United States acknowledges the entrenched 5-2 circuit split on the question presented, agrees with Ava (and the decision below) that a "bad faith or gross misjudgment" test has no basis in statutory text, and recognizes that the issue is vitally important to children with disabilities and their families. *Id.* The United States' statement of interest in *Robertson* thus confirms that Ava's petition for certiorari in this case should be granted.[1]

1. In *Robertson*, a nonprofit organization and several children with disabilities sued the District of Columbia under the ADA and Rehabilitation Act. Add.3a-4a. They allege that the District's failure to provide adequate transportation to and from school

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[1] *See* Council of Parent Attorneys and Advocates Amici Br. 7-8 (likewise highlighting the United States' *Robertson* submission endorsing Ava's merits arguments and noting the circuit split).

has significantly impeded their access to educational services. *Id.* at 3a.

On September 4, 2024, the District of Columbia moved to dismiss, arguing (as relevant here) that the plaintiffs "have not plausibly alleged that the District has acted in bad faith or with gross misjudgment." *Robertson* Mem. in Supp. Mot. Dismiss 24, Dkt. 58-1. The District acknowledged that the D.C. Circuit has never adopted that standard but asked the district court to follow "most" other circuits in imposing it. *Id.* at 22. The *Robertson* plaintiffs responded, as Ava has argued throughout this litigation, that the "bad faith or gross misjudgment" test first established in *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982), is fundamentally "atextual and unfounded." *Robertson* Opp. to Mot. Dismiss 23-26, Dkt. 60; *see* Pet.32-33.

On September 30, 2024—nearly four weeks after Ava filed her petition for certiorari—the United States filed a statement of interest supporting the *Robertson* plaintiffs' position. *See* Add.1a-19a; 28 U.S.C. § 517 (authorizing "any officer of the Department of Justice" to "attend to the interests of the United States in a suit pending in a court of the United States"). That submission notes the federal government's "substantial interest in supporting the proper interpretation and application of Title II [of the ADA] and Section 504 [of the Rehabilitation Act]." Add.2a. And it accordingly urges the district court to reject the "bad-faith-or-gross-misjudgment standard" invented by the Eighth Circuit in *Monahan* and reluctantly applied by the panel in Ava's case. *Id.* at 6a-19a; *see* Pet.App.3a-5a & n.2.

2. The United States' statement of interest in *Robertson* acknowledges that the circuits have long

been split 5-2 on the question presented—and that Ava "recently filed a petition for a writ of certiorari" on the issue. Add.8a & n.3, 12a n.4. Relying on the same cases cited in Ava's petition, the United States observes that the bad-faith-or-gross-misjudgment standard "originated more than forty years ago with the Eighth Circuit in *Monahan*" and has since been "reflexively adopted" by "[t]he Second, Fourth, Fifth, and Sixth Circuits" as well. *Id.* at 8a & n.3 (citing *Monahan*, 687 F.2d at 1170-71; *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 841 (2d Cir. 2014); *Sellers ex rel. Sellers v. Sch. Bd. of the City of Manassas*, 141 F.3d 524, 529 (4th Cir. 1998); *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 454-55 (5th Cir. 2010); *G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623, 635 (6th Cir. 2013)); *see* Pet.15-17. And in direct conflict with those five circuits, the United States continues, the Third and Ninth Circuits "hold that children bringing education-related claims under [the ADA and Rehabilitation Act] need only show that they were denied the benefits of a program or otherwise discriminated against by reason of their disability" to establish liability. Add.8a (citing *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 269 (3d Cir. 2014); *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010)); *see* Pet.17-19.

The United States acknowledges that, while "the D.C. Circuit has never addressed whether children alleging educated-related discrimination under the ADA and the Rehabilitation Act must satisfy a heightened standard of bad faith or gross misjudgment," district courts within the D.C. Circuit have consistently "required such a showing" in this single factual context. Add.7a-8a; *see* Pet.17 (citing

*Reid-Witt ex rel. C.W. v. District of Columbia*, 486 F. Supp. 3d 1, 7 (D.D.C. 2020)). But the United States urges the *Robertson* court to depart from those decisions and "reject the atextual standard that *Monahan* announced." Add.8a. Instead, the United States preaches fealty to the ADA and Rehabilitation Act's "plain text," which requires treating children with disabilities bringing education-related claims just like everyone else. *Id.*

3. The United States' statement of interest in *Robertson* fully adopts the merits arguments advanced in Ava's petition for certiorari. *Compare id.* at 7a-18a, *with* Pet.22-30. "Specifically, the United States asserts that requiring children with disabilities who face discrimination in the school setting—unlike any other category of plaintiffs—to show a defendant's 'bad faith or gross misjudgment' to establish liability under [the ADA] and [the Rehabilitation Act] is contrary to the text, structure, and purpose of those statutes." Add.2a.

*First*, the United States agrees with Ava (and the decision below) that *Monahan*'s bad-faith-or-gross-misjudgment standard lacks any "basis" in statutory text. *Id.* at 11a; *see* Pet.22-25; Pet.App.5a n.2. "The words 'bad faith' and 'gross misjudgment' appear nowhere within the text of either [the ADA] or [Rehabilitation Act]." Add.7a. And neither statute "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.* "Consequently," the United States explains, "where courts have interpreted [the ADA] and [Rehabilitation Act] to require proof of certain elements for claims outside of the school context, they

must do the same with claims in the school context." *Id.* at 11a. Any other rule would violate this "Court's instructions on how courts are to interpret statutes" by improperly assigning "different meanings" to "the same language" depending solely on the factual context in which a particular claim arises. *Id.* (citing *Clark v. Martinez*, 543 U.S. 371, 378 (2005)).

*Second*, the United States likewise agrees that "[c]ongressional action after *Monahan* further dooms [the decision's] premise that a heightened standard was necessary to 'harmonize'" the precursor to the Individuals with Disabilities Education Act (IDEA) "with the Rehabilitation Act." *Id.* at 14a-15a. In particular, the United States—like Ava and the decision below—points to 20 U.S.C. § 1415(*l*), which commands that "[n]othing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under" the ADA, Rehabilitation Act, and other federal laws. *See* Add.15a-16a (quoting 20 U.S.C. § 1415(*l*)); Pet.26; Pet.App.5a n.2. Thus, imposing a "bad-faith-or-gross-misjudgment standard is unnecessary to harmonize the IDEA with" the ADA or Rehabilitation Act—because those statutes, "as they are written," already do that work. Add.18a. Construing the IDEA to restrict or limit the relief available under the ADA and Rehabilitation Act, as *Monahan* did, directly "contradict[s]" the plain text of Section 1415(*l*). *Id.*

*Third*, the United States reiterates that *Monahan*'s atextual standard violates the ADA and Rehabilitation Act's core purpose of "address[ing] discrimination resulting not only from invidious animus, but also from mere thoughtlessness." Add.13a; *see* Pet.26-29. Under *Monahan*'s heightened standard, "much of the conduct that Congress sought

to alter in passing the Rehabilitation Act would be difficult if not impossible to reach." Add.13a (quoting *Alexander v. Choate*, 469 U.S. 287, 296-97 (1985)). "Congress did not provide for such a result," which senselessly disadvantages some of society's most vulnerable members. *Id.* at 14a.

4. The United States' *Robertson* submission powerfully confirms that Ava's petition for certiorari should be granted. Besides acknowledging the entrenched circuit split and glaring problems with the majority rule, the United States agrees that the "legal standard required to establish liability for discrimination against students with disabilities" under the ADA and Rehabilitation Act is a critically "important question[]." *Id.* at 2a; *see* Pet.30-32. It also recognizes that "[r]equiring bad faith or gross misjudgment" would "unfairly close the courthouse doors to many students seeking relief from education-related discrimination." Add.14a; *see* Pet.31-32. And it emphasizes that both the Sixth and Eighth Circuits "have recently criticized *Monahan*'s rule," while continuing to apply that artificially stringent standard nevertheless. Add.12a (citing *Knox County v. M.Q.*, 62 F.4th 978, 1002 (6th Cir. 2023); *A.J.T. ex rel. A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 96 F.4th 1058, 1061 n.2 (8th Cir. 2024) (Pet.App.5a n.2)); *see* Pet.21.

In addition, the very fact of the ongoing litigation in *Robertson* underscores the importance of the question presented. What legal standard governs education-related claims affects every ADA or Rehabilitation Act suit brought by children with disabilities against school officials. Pet.31-32. Those kinds of cases crop up all the time. Indeed, in the few short weeks since Ava filed her petition for certiorari,

yet another district court has relied on *Monahan*'s bad-faith-or-gross-misjudgment standard to reject claims like hers. *See Parnes v. Orange Cnty. Sch. Bd.*, 2024 WL 4290383, at *4-6 (M.D. Fla. Sept. 25, 2024); *see* Pet. 31 n.4 (collecting similar cases).

Given all this, there is no need to delay this case any further by calling for the views of the Solicitor General. The United States' statement of interest in *Robertson* has already recognized the obvious: The question presented warrants review—now.

* * *

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 7, 2024

# ADDENDUM

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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|---|---|
| CRYSTAL ROBERTSON, et al.,<br>Plaintiffs,<br>v.<br>DISTRICT OF COLUMBIA,<br>Defendant. | Civil Action No. 24-0656 (PLF) |

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

* * *

The United States of America respectfully submits this Statement of Interest in accordance with 28 U.S.C. § 517[1] to provide its views regarding the elements of a claim under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Specifically, the United States asserts that requiring children with disabilities who face discrimination in the school setting—unlike any other category of plaintiffs—to show a defendant's "bad faith or gross misjudgment" to establish liability under Title II and Section 504 is contrary to the text, structure, and

[1] Congress has authorized the Attorney General to send "any officer of the Department of Justice . . . to any . . . district in the United States to attend to the interests of the United States in a suit pending in a court of the United States." 28 U.S.C. § 517.

purpose of those statutes. The United States does not take a position on any other disputed issue in this litigation.

## INTEREST OF THE UNITED STATES

This lawsuit raises important questions about the legal standard required to establish liability for discrimination against students with disabilities under Title II of the ADA and Section 504 of the Rehabilitation Act. Congress charged the United States Department of Justice with issuing regulations to implement Title II, *see* 42 U.S.C. § 12134(a), and with enforcing the statute, *see* 42 U.S.C. § 12133 (incorporating 29 U.S.C. § 794a(a)(2), which in turn incorporates 42 U.S.C. 2000d *et seq*.); 28 C.F.R. § 35.170 *et seq*. The Department of Justice also enforces Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a(a)(2), and coordinates federal agencies' implementation of Section 504, 28 C.F.R. Part 41. In the school context, the United States Department of Education administratively enforces Title II and Section 504. As a result, the federal government has a substantial interest in supporting the proper interpretation and application of Title II and Section 504.

Specifically, the United States submits this Statement of Interest to assist the Court in its analysis of the District of Columbia's (the "District's) Partial Motion to Dismiss, *see* ECF No. 58.

## PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiffs are a non-profit organization (i.e., The Arc of the United States) and five parents or guardians of students with disabilities who are enrolled in public schools operated by the District of

Columbia. Compl. ¶¶ 26-31.[2] Plaintiffs allege that the District's Office of the State Superintendent of Education ("Superintendent's Office") is responsible for providing each student with safe, reliable, and appropriate transportation services to attend school. *See id.* ¶¶ 1, 2, 6, 44-45, 57. Although Plaintiffs rely on transportation provided by the Superintendent's Office, they assert that their transportation often arrives late, if at all, causing "significant disruptions, including missed school days and significantly late arrivals to school." *Id.* ¶ 57. Such "interruption[s] to their daily routine can create a ripple effect," which results in students with disabilities being "unavailable for learning because they need time to regulate their emotions and behavior, and to catch up on what they missed due to their late arrival." *Id.* Moreover, Plaintiffs allege that the Superintendent's Office "regularly strands" students with disabilities at school or else picks them up "before the end of the school day, requiring them to miss instructional time in order to get a ride home." *Id.* ¶¶ 6, 61.

The complaint asserts four causes of action. First, Plaintiffs allege that the District is violating the Individuals with Disabilities Education Act ("IDEA") by failing to ensure they receive transportation services to school, thereby denying them a free appropriate public education. Compl. ¶¶ 219-28. Second, Plaintiffs allege that the District is discriminating against them under Title II of the ADA by denying them an educational opportunity equal to that provided to other children and also by

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[2] Plaintiffs also seek to represent a class of similarly situated students, *see* Compl. ¶¶ 211-18, but the Court has not yet ruled on Plaintiffs' class certification motion, *see* ECF No. 29.

unnecessarily segregating them from students without disabilities. *Id.* ¶¶ 229-41. Third, Plaintiffs allege that the District's unlawful discrimination and segregation similarly violates Section 504 the Rehabilitation Act. *Id.* ¶¶ 242-53. Fourth, and finally, Plaintiffs allege that the District's conduct violates the D.C. Human Rights Act, D.C. Code § 2-1401.01, *et seq.* *Id.* ¶¶ 254-60. Plaintiffs seek declaratory and injunctive relief as well as reimbursement for certain transportation and education-related expenditures under District of Columbia law. *Id.* ¶¶ 262-72.

## STATUTORY AND REGULATORY BACKGROUND

### I. Section 504 of the Rehabilitation Act.

Congress enacted Section 504 to "enlist[] all programs receiving federal funds in an effort 'to share with handicapped Americans the opportunities for an education, transportation, housing, health care, and jobs that other Americans take for granted.'" *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 277 (1987) (quoting 123 Cong. Rec. 13515 (1977) (statement of Sen. Humphrey)); *see Alexander v. Choate*, 469 U.S. 287, 295-96 (1985) (noting that Congress viewed the resulting harm from discrimination against individuals with disabilities to be the product of "thoughtlessness and indifference"). Section 504 provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794(a). Generally, to prove a violation of Section 504

against a recipient of federal funds like the Superintendent's Office, *see* Compl. ¶ 32, a plaintiff "must show that (1) they are disabled within the meaning of the Rehabilitation Act, (2) they are otherwise qualified, [and] (3) they were excluded from, denied the benefit of, or subject to discrimination under a program or activity[.]" *Am. Council of the Blind v. Paulson,* 525 F.3d 1256, 1266 (D.C. Cir. 2008).

**II. Title II of the ADA.**

In 1990, Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). In so doing, Congress found that, "historically, society has tended to isolate and segregate individuals with disabilities" and that "individuals with disabilities continually encounter various forms of discrimination, including . . . segregation." *Id.* §§ 12101(a)(2), (5). For public entities' services, programs, and activities, like the public education provided by the District, Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." *Id.* § 12132. Courts evaluate claims brought under Title II of the ADA and Section 504 using the same framework. *See Paulson*, 525 F.3d at 1260, n.2.

**III. The IDEA.**

The IDEA ensures that all eligible students with disabilities receive a free appropriate public education, sometimes referred to as a "FAPE." *See*

20 U.S.C. § 1412(a)(1)(A). That education includes specially designed instruction, along with related services to permit students to benefit from it. 20 U.S.C. § 1401(9), (26), (29); *see also Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203 (1982). The "related services" under the IDEA include transportation services, such as those provided by the District here. 20 U.S.C. § 1401(26)(A); *see also Pierre-Noel v. Bridges Pub. Charter Sch.*, Civ. A. No. 23-0070, 2024 WL 4018954, at *1 (D.C. Cir. Sept. 3, 2024). Each student receives an Individualized Education Program, which is the "centerpiece of the [IDEA's] education delivery system." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (cleaned up; quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)). Individualized Education Programs must tailor special education supports to a student's unique needs so that they may "advance appropriately toward [achieving] the[ir] annual goals" and be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 391, 399; *see also* 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

## ARGUMENT

Students with disabilities seeking relief from education-related discrimination should not be forced to show defendants' "bad faith or gross misjudgment" to establish liability under Title II of the ADA or Section 504 of the Rehabilitation Act, as the District advocates, *see* Def.'s Partial Mot. to Dismiss (ECF No. 58-1, "Def.'s Br.") at 21. Imposing such a requirement is inconsistent with the text, structure, and purpose of those statutes. Accordingly, the Court should reject the District's heightened standard and treat

Plaintiffs' Title II and Section 504 claims like any other outside of the education context.

## I. The Text of the ADA and Rehabilitation Act Requires Proof That a Defendant Acted "By Reason" of a Person's Disability and Makes No Mention of a "Bad Faith Or Gross Misjudgment" Standard In Any Context, Let Alone the School Context.

Section 504 states that "[n]o otherwise qualified individual with a disability [shall] solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Similarly, Title II states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The words "bad faith" and "gross misjudgment" appear nowhere within the text of either Title II or Section 504. Additionally, 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.

As the District concedes, *see* Def.'s Br. at 23, the D.C. Circuit has never addressed whether children alleging educated-related discrimination under the ADA and the Rehabilitation Act must satisfy a heightened standard of bad faith or gross misjudgment. Courts in this district have required

such a showing for education-related ADA and Rehabilitation Act claims. *Id.* (citing cases). That requirement originated more than forty years ago with the Eighth Circuit in *Monahan v. Nebraska*, 687 F.2d 1164, 1170-71 (8th Cir. 1982), a decision that pre-dated the ADA. As discussed below, *Monahan* was incorrectly decided, and it has in any event been superseded by statute. This Court should therefore reject the atextual standard that *Monahan* announced and that certain other courts of appeals have reflexively adopted.[3] Rather, in accordance with precedent of the Third and Ninth Circuits, this Court should follow the plain text of Title II and Section 504 and hold that children bringing education-related claims under those statutes need only show that they were denied the benefits of a program or otherwise discriminated against by reason of their disability to prevail. *See, e.g., D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 269 (3d Cir. 2014); *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010).

In *Monahan*, the court affirmed the dismissal of plaintiffs' Rehabilitation Act claim alleging the improper educational placement of plaintiffs' children with disabilities. *Id.* at 1169-70. In particular, the *Monahan* court viewed the Rehabilitation Act claim

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[3] The Second, Fourth, Fifth, and Sixth Circuits have adopted the Eighth Circuit's interpretation of the Rehabilitation Act and require school-age children claiming discrimination related to their education to establish bad faith or gross misjudgment to show a Section 504 violation. *See, e.g., Sellers ex rel. Sellers v. Sch. Bd. of the City of Manassas*, 141 F.3d 524, 529 (4th Cir. 1998); *D.A. ex rel. Latasha A. v. Houston Ind. Sch. Dist.*, 629 F.3d 450, 454-55 (5th Cir. 2010); *G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623, 635 (6th Cir. 2013); *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 841 (2d Cir. 2014).

as "rest[ing] on the same procedural theories that plaintiffs ha[d] unsuccessfully argued under the" Education for All Handicapped Children Act ("Education for All Act"), the IDEA's predecessor. *Id.* at 1164. Those claims were about a state law that arguably conflicted with the Education for All Act's mandates and, more generally, about hearings where parents could challenge educational placements allegedly in violation of the Education for All Act. *Id.* at 1167, 1169. Because an amendment to the offending state law had mooted the Education for All Act claim, the court concluded that dismissal without prejudice of the redundant Rehabilitation Act claim was not in error. *Id.* at 1170. In so doing, the court went on to "add a few words for the guidance of the District Court and the parties" if plaintiffs chose to pursue a similar Rehabilitation Act claim in the future. *Id.* In this dictum, the court stated that plaintiffs must show "bad faith or gross misjudgment" before a "violation can be made out" in "the context of education of handicapped children." *Id.* at 1170-71. To justify that heightened standard, the court found it had a "duty to harmonize the Rehabilitation Act" with the Education for All Act because the latter specifically addressed the educational needs of children with disabilities. *Id.* at 1171. Thus, the court reasoned, the heightened standard was necessary to "give each of these statutes the full play intended by Congress" and achieve "what [the court] believe[d] to be a proper balance between the rights of handicapped children, the responsibilities of state education officials, and the competence of courts to make judgments in technical fields." *Id.*

The D.C. Circuit has never adopted *Monahan*'s holding, but it cited the decision in another pre-ADA

ruling, *Lunceford v. D.C. Board of Education*, 745 F.2d 1577, 1580 (D.C. Cir. 1984), for a different proposition—that the Rehabilitation Act requires more than a mere showing that the school failed to provide a free appropriate public education. *Id.* (quoting *Monahan*, 687 F.2d at 1170). In *Lunceford*, a District ward challenged his discharge from a private residential treatment facility under the Education for All Act and obtained a district court injunction against the facility. *Id.* at 1578. The D.C. Circuit reversed, holding that the facility—as a non-governmental actor—was not subject to the Education for All Act's requirements. *Id.* The D.C. Circuit also found that the Rehabilitation Act failed to support the injunction because the record was devoid of any discrimination based on Lunceford's disabilities because the parties agreed and stipulated that the facility's "decision to discharge [plaintiff] rested on the staff's determination that 'he [was] no longer medically appropriate for hospitalization[.]" *Id.* at 1578-80 (finding that "the discharge of [Lunceford] to permit the admission of another sorely handicapped child rationally could not amount to disadvantageous treatment").

To establish disability-based discrimination under Title II and Section 504, courts have held that a plaintiff must prove that (1) she is a qualified individual with a disability; (2) she is being excluded from participation in, or is being denied benefits of, services, programs, or activities for which a public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination is by reason of her disability. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250,

267 (D.D.C. 2015) (citing *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999)). Accepting the District's argument would add an element to a discrimination claim—that the alleged discrimination be due to defendants' bad faith or gross misjudgment. And it would do so in only one specific context—claims concerning the education of children. *See B.R. ex rel. Rempson v. District of Columbia*, 524 F. Supp. 2d 35, 41 (D.D.C. 2007) (applying this requirement exclusively in the "context of children who receive benefits pursuant to the IDEA").

The District's arguments not only find no basis in the text of Title II and Section 504, they also ignore the Supreme Court's instructions on how courts are to interpret statutes. The Supreme Court has specifically rejected an approach to statutory interpretation that leads to different meanings for the same language. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005) (noting that "to give [the] same words a different meaning for each [context] would be to invent a statute rather than interpret one"). Consequently, where courts have interpreted Title II and Section 504 to require proof of certain elements for claims outside of the school context, they must do the same with claims in the school context. The Supreme Court has further cautioned that courts "do not—[and] cannot—add provisions to a federal statute." *Alabama v. North Carolina*, 560 U.S. 330, 352 (2010). So, again, courts are not empowered to rewrite a statute to require an element of bad faith or gross misjudgment that Congress did not impose. Tellingly, the District does not attempt to explain how the different treatment of students protected under Title II or Section 504 can be squared with those statutes, nor does it otherwise engage with the text of

either statute. *See generally* Def.'s Br. Accordingly, this Court should decline to read the words "bad faith or gross misjudgment for education-related claims by children" into Title II and Section 504.

Notably, other courts have recently criticized *Monahan*'s rule—even in Circuits that have previously applied it. A panel of the Eighth Circuit recently lamented *Monahan*'s addition of a "judicial gloss" on Section 504 that lacked "any anchor in statutory text." *A.J.T. ex rel. A.T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279*, 96 F.4th 1058, 1061 n.2 (8th Cir. 2024) (concluding that it was nonetheless "constrained" by *Monahan*'s bar).[4] And the Sixth Circuit likewise criticized precedent adopting *Monahan*'s bad-faith-or-gross-misjudgment standard, calling *Monahan*'s test "an impossibly high bar" that is "hard to square" with "statutory protection[s] that," by their terms, "reach[] even the unintentional denial of services." *Knox County v. M.Q.*, 62 F.4th 978, 1002 (6th Cir. 2023). Moreover, as noted above, the Third and Ninth Circuits apply the same standards 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. Accordingly, this Court should reject the bad-faith-or-gross-misjudgment requirement for discrimination claims.

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[4] Plaintiffs in *A.J.T.* recently filed a petition for a writ of certiorari with the Supreme Court in September 2024, which remains pending.

## II. Requiring Plaintiffs to Show Bad Faith or Gross Misjudgment Undermines the Purpose of the ADA and Rehabilitation Act

Adhering to the statutory text of Title II and Section 504 is also consistent with the purpose of these statutes to address discrimination resulting not only from invidious animus, but also from mere thoughtlessness. In *Alexander*, the Supreme Court considered whether Section 504 reaches only purposeful discrimination. Specifically, the Court explained that "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." 469 U.S. at 295. The Court further explained that "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach" if Section 504 were "construed to proscribe only conduct fueled by a discriminatory intent." *Id.* at 296-97; *accord Paulson*, 525 F.3d at 1260. The same is true for the ADA. *See Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995) ("Because the ADA evolved from an attempt to remedy the effects of 'benign neglect' resulting from the 'invisibility' of the disabled, Congress could not have intended to limit the Act's protections and prohibitions to circumstances involving deliberate discrimination.").

Here, the Court should hold Plaintiffs' Title II and Section 504 discrimination claims to the same standard as any other claimants outside the education context. That is, the Court must determine whether Plaintiffs' allegations plausibly show that they were excluded from, denied the benefit of, or subjected to discrimination based on their disabilities.

*Paulson*, 525 F.3d at 1266; *Pierce*, 128 F. Supp. 3d at 267. An additional showing of intent (in the form of mere deliberate indifference) would only be relevant if Plaintiffs were claiming entitlement to compensatory damages, which they are not. *See Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019) ("In the ordinary course, proof of a Title II or § 504 violation entitles a plaintiff only to injunctive relief. To get damages . . . a plaintiff must clear an additional hurdle: he must prove that the entity that he has sued engaged in intentional discrimination, which requires a showing of 'deliberate indifference.'" (internal citations omitted)); *see Pierce*, 128 F. Supp. 3d at 278 (noting that, although the D.C. Circuit has yet to address the question, most circuits require a showing of "deliberate indifference" to establish intentional discrimination under Title II and Section 504, as required for compensatory damages).

Requiring bad faith or gross misjudgment to obtain even injunctive relief would unfairly close the courthouse doors to many students seeking relief from education-related discrimination. *See, e.g., Walker v. District of Columbia*, 157 F. Supp. 2d 11, 36 (D.D.C. 2001) (acknowledging the impact of the heightened standard on plaintiffs). Indeed, the District admits that *Monahan*'s rule imposes a "high bar" on aggrieved school-age children. Def.'s Br. at 19. As established above, Congress did not provide for such a result, which enjoys no support in the text of either the ADA or Rehabilitation Act.

## III. Congress Rejected *Monahan's* Premise Years Ago.

Congressional action after *Monahan* further dooms its premise that a heightened standard was

necessary to "harmonize" the IDEA (then the Education for All Act) with the Rehabilitation Act. Two years after *Monahan*, the Supreme Court ventured beyond *Monahan* and held that the Education for All Act provided the "exclusive avenue" for children with disabilities to bring discrimination claims related to the adequacy of their education. *Smith v. Robinson*, 468 U.S. 992, 1009 (1984); *see Fry v. Napoleon Comm. Schs.*, 580 U.S. 154, 160-61 (2017). Like *Monahan*, the Supreme Court in *Smith* sought to reconcile the IDEA and Section 504 by holding that a Section 504 claim could not proceed unless it alleged something more than the denial of a free appropriate public education. *Id.* at 1021 (holding that "a plaintiff may not circumvent or enlarge on the remedies available under the [Education for All Act] by resort to § 504").

Congress disagreed. It speedily abrogated *Smith* in 1986 by amending the Education for All Act to clarify that the statute should not be construed as the only statute to provide a remedy for children with disabilities. *See* Handicapped Children's Protection Act of 1986, Pub. L. No. 99-327, § 3, 100 Stat. 796, 797 (1986); *Walker v. District of Columbia*, 969 F. Supp. 794, 796 (D.D.C. 1997) (noting that the House Report made clear that "since 1978, it has been Congress' intent to permit parents or guardians to pursue the rights of handicapped children through [the IDEA], section 504 [of the Rehabilitation Act], and section 1983" (quoting H.R. Rep. No. 99-296, 99th Cong., 1st Sess. 4 (1985))). That amendment, which later added a reference to Title II of the ADA, states:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the

> Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 *et seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. § 1415(l).

This provision is necessary to provide children with disabilities the full protection that Congress intended. *See Massey v. District of Columbia*, 437 F. Supp. 2d 13, 16 (D.D.C. 2006) (noting that § 1415(l) provided "no basis for construing the IDEA as an exclusive remedy" for a student with special education needs). Indeed, the Supreme Court has acknowledged that "the IDEA does not prevent a plaintiff from asserting claims under [the ADA or Rehabilitation Act] under such laws even if . . . those claims allege the denial of an appropriate public education (much like an IDEA claim would)." *Fry*, 580 U.S. at 161 (holding that Section 1415(l)'s exhaustion requirement does not apply unless the plaintiff seeks relief for the denial of a free appropriate public education). Just as Section 1415(l) confirms the ability of children with disabilities to seek relief under Title II and Section 504, it also confirms that children with disabilities' remedies are not limited by those available only under the IDEA. *See Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 149-50 (2023) (holding that a suit premised on the past denial of a free and appropriate education may nonetheless proceed without exhausting IDEA's

administrative processes if the remedy a plaintiff seeks is not one IDEA provides, such as compensatory damages under the ADA or Rehabilitation Act). Further, when this Court previously considered whether the IDEA precluded claims under the Equal Protection Clause, it found that when Congress enacted Section 1415(l)—then Section 1415(f)—it "intended to preserve *all alternative civil rights remedies*, including those available under Section 1983, to vindicate the rights created by the IDEA." *Walker*, 969 F. Supp. at 797 (emphasis added).

The District's motion avoids any mention of Section 1415(l) and instead argues that "neither *Fry* nor *Perez* addressed the precise question" of whether the bad-faith-or-gross-misjudgment standard applies here. Def.'s Br. at 22. True enough—both cases concerned the IDEA's exhaustion requirements, not the elements of a Title II or Section 504 claim. But the District fails to grapple with the Supreme Court's acknowledgment in *Fry* that the IDEA, on one hand, and Title II and Section 504, on the other, all protect the rights of children with disabilities in overlapping but different ways. The Court summarized it this way:

> [T]he IDEA guarantees individually tailored educational services, while Title II and § 504 promise non-discriminatory access to public institutions. That is not to deny some overlap in coverage: The same conduct might violate all three statutes—which is why, as in *Smith*, a plaintiff might seek relief for the denial of a [free appropriate public education] under Title II and § 504 as well as the IDEA. But still, the statutory differences [] mean that a complaint brought under Title II and § 504 might instead

> seek relief for simple discrimination, irrespective of the IDEA's [free appropriate public education] obligation.

*Fry*, 580 U.S. at 170-71. Thus, although Title II and Section 504 prohibit the many forms of discrimination in all areas of public life, including education, the IDEA focuses more narrowly on the provision of educational services to children with disabilities based on each child's particular disability and individual educational needs. That is, under the IDEA, "a school must offer an [Individualized Education Program] reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 580 U.S. at 399.

Based on the foregoing, the bad-faith-or-gross-misjudgment standard is unnecessary to harmonize the IDEA with Title II and Section 504 and is contradicted by 20 U.S.C. § 1415(l), which specifies that the IDEA is not to be "construed to restrict or limit" rights available under Title II and the Section 504. Rather, as the Supreme Court has recognized, the statutes—as they are written—are inherently distinct.

* * *

## CONCLUSION

For these reasons, the Court should decline to apply a bad-faith-or-gross-misjudgment standard to Plaintiffs' discrimination claims under Title II of the ADA and Section 504 of the Rehabilitation Act.

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Respectfully submitted,

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