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 Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

BRIEF OF COUNCIL OF PARENT ATTORNEYS AND ADVOCATES AND ELEVEN OTHER DISABILITY-RIGHTS ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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Interest of Amici[1]

Amici curiae are Council of Parent Attorneys and Advocates, The Arc of the United States, Bazelon Center for Mental Health Law, Children's Law Center, Disability Rights Education and Defense Fund, Education Law Center, Learning Rights Law Center, Minnesota Legal Aid, National Center for Youth Law, National Disability Rights Network, National Health Law Project, and the Washington Lawyers Committee for Civil Rights and Urban Affairs. Together, they share a commitment to protecting the rights of schoolchildren with disabilities. In pursuit of that commitment, amici represent schoolchildren in safeguarding their civil rights under a range of federal laws, including Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, which authorize awards of injunctive relief and monetary damages to individuals who have suffered compensable harms from disability discrimination.

The legal rule whose demise is sought in this case—the bad-faith-or-gross-misjudgment standard—cannot be squared with the text or purposes of Section 504 and the ADA. Amici explain, through a detailed review of case examples, that this standard erects a nearly insurmountable barrier to recovery of compensatory damages under those statutes, contrary to the will of Congress and to the detriment of the schoolchildren with disabilities whose interests amici serve.

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[1] No counsel for a party authored this brief in any part, and no one other than amici curiae or their counsel made a monetary contribution to the preparation or submission of this brief.

Amici have filed amicus briefs in this Court in other cases involving the rights of schoolchildren with disabilities, 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 School District*, 550 U.S. 516 (2007); *Board of Education v. Tom F.*, 552 U.S. 1 (2007); *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006); and *Schaffer v. Weast*, 546 U.S. 49 (2005). In doing so, they have brought to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. They seek to do the same here.

Introduction and Summary of Argument

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA) work together to protect the rights of schoolchildren with disabilities, with Section 504 and the ADA serving a distinct role in remedying disability discrimination.

The IDEA guarantees schoolchildren with disabilities a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A).[2] Section 504 and the ADA go further, broadly banning disability discrimination in a wide range of institutions and settings, including in public schools. As relevant here, the ADA provides

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[2] For simplicity's sake, this brief uses the term "IDEA" to refer to the current version of that statute as well as its predecessors, such as the Education for All Handicapped Children Act. *See Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 392 n.1 (2017).

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." 42 U.S.C. § 12132. Section 504 contains a similarly worded prohibition applicable to recipients of federal funding. *See* 29 U.S.C. § 794(a).

The IDEA seeks to provide children with disabilities essential educational services, whereas Section 504 and the ADA are far-reaching civil-rights statutes with broader mandates and distinct remedies. While the IDEA seeks to ensure that children with disabilities receive an appropriate education, its only remedies when this right has been violated are equitable, such as an award of compensatory special-education services. Section 504 and the ADA, on the other hand, expressly authorize awards of both injunctive relief and compensatory damages to students who have suffered disability discrimination, ensuring that students and their families are made whole when discrimination has caused wage losses, medical expenses, and other harms that the IDEA cannot remedy.

It is commonly understood that plaintiffs suing under Section 504 and the ADA can obtain injunctive relief without proving intentional disability discrimination. *See* Pet'r Br. 8-9 & n.1, 29; Pet. App. 5a n.2. And it is also generally understood that obtaining compensatory damages under these statutes requires the plaintiff to show that the defendant acted with deliberate indifference to the plaintiff's federally protected rights. *See* Pet'r Br. 9 (citing *Pierce v.*

District of Columbia, 128 F. Supp. 3d 250, 278-79 (D.D.C. 2015) (Jackson, J.)).

But, in a rule applicable only to damages suits brought by K-12 schoolchildren against their schools, five circuits follow another standard of their own invention: The defendant must have acted in "bad-faith" or with "gross misjudgment." That is, unless this standard is met, schoolchildren suing under Section 504 or the ADA may not obtain compensatory damages simply because—and only because—the discrimination victims are schoolchildren. That reading has no basis in the text or purposes of those laws. Quite the contrary. In 20 U.S.C. § 1415(*l*), enacted to overturn one of this Court's decisions, *Smith v. Robinson*, 468 U.S. 992 (1984), Congress expressly provided that the IDEA may not "restrict or limit the rights, procedures, and remedies" available under Section 504 or the ADA.

The bad-faith-or-gross-misjudgment standard imposes an onerous burden on schoolchildren who bring Section 504 and ADA claims for damages. "Only in the rarest of cases will a plaintiff be able to prove that a school system's conduct is so persistent and egregious as to warrant such a unique remedy not otherwise provided for by the IDEA itself." *Walker v. District of Columbia*, 157 F. Supp. 2d 11, 36 (D.D.C. 2001). Imposing this uniquely high standard on schoolchildren facing disability discrimination—in contrast to the deliberate-indifference standard courts apply in all other disability-discrimination cases in which damages are sought—strips these civil-rights statutes of their intended force, undermining the anti-discrimination guarantees of Section 504 and the ADA and leaving harmed schoolchildren without a remedy.

In this brief, amici review case examples in which, time and again, the bad-faith-or-gross-misjudgment standard is deployed to the detriment of children with disabilities in K-12 schools. As indicated, a defendant's bad faith or gross misjudgment is exceedingly difficult to prove. So, even schoolchildren who experience severe discrimination based on their disabilities are frequently denied much-needed compensatory damages. Our case review shows that, on the other hand, under the appropriate standard—the standard applicable to everyone outside the K-12 school setting—these schoolchildren would have been compensated for the harms caused by the discrimination that Section 504 and the ADA seek to remedy.

Argument

Section 504 and the ADA are comprehensive anti-discrimination statutes that seek to eliminate disability discrimination in all walks of life and in a wide range of institutions, public and private. They ban discrimination against people with disabilities and require institutions, including schools, to make reasonable accommodations so that people with disabilities can participate fully in the life of the Nation. They thus serve broader purposes and provide remedies beyond those available under the IDEA, which ensures that children with disabilities receive the specialized instruction or related services needed to obtain a free appropriate public education.

Despite the clear, expansive text of Section 504 and its stated aim of eliminating disability discrimination, the Eighth Circuit, in *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982), adopted an

atextual, highly restrictive standard for schoolchildren with disabilities—and only schoolchildren with disabilities—who seek injunctive relief and damages under Section 504. Purporting to "harmonize the Rehabilitation Act and the [IDEA] to the fullest extent possible," *id.* at 1171, *Monahan* imposed an almost insurmountable burden on schoolchildren and their families seeking any relief under Section 504.

Worse, over the years, *Monahan*'s misunderstanding of Section 504 has metastasized to four other circuits, undermining Congress's mandate to combat discrimination against schoolchildren with disabilities under both Section 504 and the later-enacted ADA. *See* Pet. 15-17. Unless this Court reverses, the *Monahan* standard will continue to erode the essential protections these statutes were designed to safeguard.

I. Section 504 and the ADA are essential safeguards for schoolchildren with disabilities that go beyond the IDEA's protections and remedies.

While the IDEA creates a comprehensive framework for ensuring that students with disabilities receive meaningful educational opportunities, Section 504 and the ADA are broader in both scope and remedies. Both prohibit discrimination against individuals in the workplace, public accommodations, universities, and many other settings, not just children in schools. Because the IDEA, on the one hand, and Section 504 and the ADA, on the other, address different concerns, the remedies available under Section 504 and the ADA to redress

discrimination are often unavailable under the IDEA. Most notably, the IDEA lacks the compensatory damages available under Section 504 and the ADA that are essential to redressing discrimination and making plaintiffs whole.

A. Section 504 and the ADA extend beyond the IDEA, broadly mandating the elimination of disability discrimination.

1. Section 504 is a landmark federal civil-rights statute directed at the protection of people with disabilities. Enacted in 1973, it 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). In the simplest of terms, Section 504 broadly prohibits recipients of federal funding from discriminating against any individual because of that person's disability. In doing so, Congress "enlisted 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)).

Recognizing the continued pervasiveness of disability discrimination, Congress enacted the ADA in 1990 to "remedy widespread discrimination against disabled individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001). The ADA prohibits

discrimination by many private entities, as well as by state and local governments, regardless of whether they receive federal funds. *See* 42 U.S.C. §§ 12132, 12131(1). Because public schools receive federal funds, they are subject to both Section 504 and the ADA.

Both statutes "aim to root out disability-based discrimination, enabling each covered person … to participate equally to all others in public facilities and federally funded programs." *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170 (2017). Courts have consistently interpreted the statutes in tandem, applying the same legal framework to claims brought under Section 504 or the ADA. *See, e.g.*, *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 117 (3d Cir. 2018); *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015); *Rodriguez v. City of New York*, 197 F.3d 611, 618 (2d Cir. 1999). And, importantly, both statutes recognize that a refusal to reasonably accommodate the needs of a person with a disability constitutes discrimination. 42 U.S.C. § 12131(2); *see* Pet'r Br. 7.

2. The IDEA, though vitally important, is more narrowly focused than Section 504 or the ADA. It guarantees students with disabilities a "free appropriate public education," or FAPE. 20 U.S.C. § 1400(d)(1)(A). The IDEA's key mechanism for achieving a FAPE is each student's "individualized education program," or IEP. *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017). The IEP is the "centerpiece of the statute's education delivery system for disabled children." *Honig v. Doe*, 484 U.S. 305, 311 (1988). It "spells out a personalized plan to meet all of the child's 'educational needs'" and prepares each child with a disability for

"further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); *see Endrew F.*, 580 U.S. at 391; *Fry*, 580 U.S. at 158. Thus, unlike the anti-discrimination and reasonable-accommodation mandates of Section 504 and the ADA, which seek to prevent the exclusion of people with disabilities from all of the opportunities and benefits of American life (including education), the IDEA guarantees students with disabilities one thing: a "substantive right to public education." *Honig*, 484 U.S. at 310.

B. Section 504 and the ADA provide important remedies unavailable under the IDEA.

1. The IDEA ensures that children with disabilities receive meaningful access to education in public schools through equitable relief, typically compensatory special-education services. *See, e.g., Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369-71 (1985); *see also Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 15-16 (1993). But the IDEA does not authorize an award of "compensatory damages." *Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 147 (2023); *see, e.g.*, *McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d 640, 647 (5th Cir. 2019); *Moore v. Kan. City Pub. Schs.*, 828 F.3d 687, 693 (8th Cir. 2016); *C.O. v. Portland Pub. Schs.*, 679 F.3d 1162, 1166 (9th Cir. 2012).

The enforcement tools available under Section 504 and the ADA are broader. By expressly adopting the remedies provided under Title VI of the Civil Rights Act of 1964, Section 504 and Title II of the ADA allow individuals harmed by disability discrimination to obtain compensatory damages as well as injunctive relief. *See* 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 18116(a);

Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212, 218 (2022); *Fry*, 580 U.S. at 158-60. So, while the IDEA sets a floor by ensuring that students with disabilities obtain an appropriate education through equitable relief, Section 504 and the ADA go further, ensuring equal rights and compensating discrimination victims for their losses.

As the Eighth Circuit below recognized, to be awarded injunctive relief under Section 504 or the ADA, which provide a remedy for ongoing violations of the right to be free from disability discrimination, the plaintiff needs to show only a statutory violation, not that the defendant acted with discriminatory intent. Pet. App. 5a; *see* Pet'r Br. 8-9 & n.1, 29, 30 n.7. To be awarded compensatory damages under Section 504 or the ADA, however, plaintiffs generally must prove intentional discrimination. *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 262 (3d Cir. 2013) (collecting cases). Courts have generally held, and petitioner Ava has acknowledged, Pet'r Br. 29, that proving intent under these statutes requires the plaintiff to demonstrate the defendant's "deliberate indifference" to her federally protected rights. *See, e.g.*, *S.H.*, 729 F.3d at 263; *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 348 (11th Cir. 2012).

Some circuits have long recognized that neither Section 504 nor the ADA distinguishes education-related disability-discrimination claims from any other discrimination claims. Consistent with the statutory text, these courts apply the same deliberate-indifference standard in damages cases arising in K-12 schools as in all other contexts. *See* Pet. 17-20 (discussing circuit case law). A standard focused on indifference makes sense. Congress has underscored

that “[d]iscrimination against the handicapped” is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect.” *Alexander v. Choate*, 469 U.S. 287, 295-96 (1985).

Yet, in defiance of the text and purposes of these statutes, the Eighth Circuit erected a nearly insurmountable barrier for schoolchildren with disabilities seeking relief from discrimination. In *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982)—a case involving claims under the IDEA and Section 504—the court broke with the prevailing standards for proving liability under Section 504 applicable to all other plaintiffs and imposed a heightened “bad faith or gross misjudgment” requirement for claims in “the context of education of handicapped children.” *Id.* at 1170-71.

The Eighth Circuit rested this novel standard on the mistaken premise that Congress intended the IDEA to narrow Section 504’s protections. *Monahan*, 687 F.2d at 1171. *Monahan*’s bad-faith-or-gross-misjudgment standard was the court’s attempt to strike a “proper balance” between the rights of students, the duties of state education officials, and judicial competence. *Id.* This approach—now followed in five circuits in Section 504 and ADA cases brought by schoolchildren with disabilities—has diluted the force of those landmark statutes, often leaving children with disabilities with the IDEA as their sole recourse.

Amici do not know where, exactly, the Eighth Circuit’s “policy-talk” came from. *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021). It lacks any basis in Section 504’s words, so it certainly didn’t come from

"a plain statutory command." *Id.* In the decision below, the Eighth Circuit exhibited what might be called long-past-due buyer's remorse, observing that *Monahan* was based on "speculat[ion] that Congress intended the IDEA's predecessor to limit Section 504's protections." Pet. App. 5a n.2. So, the court went on, "without any anchor in statutory text, we added a judicial gloss on Section 504 to achieve that end." Pet. App. 5a n.2. In any case, the source of *Monahan*'s invention makes no difference because Congress rejected its premise nearly forty years ago.

In *Smith v. Robinson*, 468 U.S. 992 (1984), this Court held that the IDEA provided the exclusive means for students with disabilities to seek relief for education-related claims. *Id.* at 1009; *see Fry*, 580 U.S. at 160. Congress swiftly overrode *Smith* by amending the IDEA to ensure that it would not limit or displace other federal protections for children with disabilities. "Nothing in [the IDEA]," Congress ordained, "shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973 [Section 504], or other Federal laws protecting the rights of children with disabilities." 20 U.S.C. § 1415(*l*).[3]

By enacting Section 1415(*l*), Congress reaffirmed that Section 504 and the ADA are distinct and fully enforceable protections, serving as "'separate vehicles[]' no less integral than the IDEA" and ensuring that students with disabilities are not

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[3] Section 1415(*l*) was enacted prior to enactment of the ADA, but it was later amended to refer specifically to the ADA. *See Fry*, 580 U.S. at 161.

limited to the IDEA's remedies alone. *See Fry*, 580 U.S. at 161 (quoting H.R. Rep. No. 99–296, at 4 (1985)). After Section 1415(*l*) and Congress's repudiation of the result in *Smith*, it simply cannot be that schoolchildren with disabilities get a watered-down version of Section 504 and the ADA—that is, a version that would, in practical effect, often leave schoolchildren with disabilities only the remedies that the IDEA provides.

2. We noted earlier (at 9) that IDEA relief is limited to equitable remedies, such as compensatory education and reimbursement for educational expenses when a school has denied a student an appropriate public education. *See, e.g.*, *Park ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006); *Moseley v. Bd. of Educ.*, 483 F.3d 689, 693-94 (10th Cir. 2007). But for some schoolchildren with disabilities, particularly those who suffer serious or long-term harm from disability discrimination, these remedies alone are inadequate.

As amici have explained (at 9-10), unlike the IDEA, Section 504 and the ADA authorize both injunctive relief *and* compensatory damages, which ensure that students with disabilities can be made whole for the harms they have suffered from disability discrimination. Damages relief covers losses such as lost income, diminished earning capacity, medical expenses, and other compensatory damages.

Perez v. Sturgis Public Schools, 598 U.S. 142 (2023), decided just two Terms ago, helps illustrate the importance of compensatory damages in the school setting. There, Miguel Perez, a deaf student, was assigned a classroom aide who did not know sign language—a failure the district knowingly allowed. *Id.*

at 145. Worse, the aide would abandon him for hours a day, leaving him completely unable to communicate. *Id.*; *see also* Petition for Writ of Certiorari at 10, *Perez*, 598 U.S. 142 (No. 21-887) (Dec. 13, 2021). As a result, Perez did not graduate high school until his mid-twenties. The school district's failure to provide timely and appropriate special education left him with permanently impaired language skills. *See* Reply Brief for Petitioner at 10, *Perez*, 598 U.S. 142 (No. 21-887) (May 24, 2022). The IDEA's equitable remedies could only do so much to redress these harms after they had occurred. But under Section 504 and the ADA, Perez could seek damages well beyond equitable relief in school, such as losses flowing from diminished future educational and job opportunities and corresponding long-term wage impairment. *See id.*

Another case similarly illuminates the importance of Section 504 and the ADA in affording children with disabilities a damages remedy. In *Smith v. Kalamazoo Public Schools*, 703 F. Supp. 3d 822 (W.D. Mich. 2023), L.S. was a student with emotional disabilities. *Id.* at 825. L.S.'s mental health deteriorated significantly after his school failed to assist him with his schoolwork following a month-long, illness-related absence. *Id.* This deterioration, in turn, led to two hospitalizations. *Id.* at 825-26. The Smith family sued under Section 504 and the ADA, seeking damages not only for medical expenses related to these hospitalizations but for lost wages after L.S.'s dad was forced to take FMLA leave to care for his son. *Id.* at 826. The court rejected the school district's attempt to have the claims dismissed as subsumed within the IDEA, indicating that medical expenses and lost

wages are compensable under Section 504 and the ADA. *Id.* at 828-29.

Between medical costs, lost wages, and compensation for diminished educational opportunities, Section 504 and the ADA compensate children with disabilities in ways the IDEA simply cannot. Without these remedies, schoolchildren subjected to discrimination would be left without full redress for the harms inflicted on them.

II. The *Monahan* standard has prevented countless schoolchildren with disabilities from obtaining needed relief.

In resisting a grant of certiorari, the respondent school district maintained that the Court need not be concerned with the bad-faith-or-gross-misjudgment standard because, in practical effect, it is no different from the deliberate-indifference standard. BIO 15. That was more than a little ironic, given that the school district argued in the Eighth Circuit below that the bad-faith-or-gross-misjudgment standard—rather than what it called the "lower intent" deliberate-indifference standard—was "more stringent." *See* Def. CA8 Br. 23. Of course. Why else would they want it?

In any event, the school district's assertion that no meaningful difference exists between the two standards is manifestly untrue. The bad-faith-or-gross-misjudgment standard, when applied by courts across a wide range of discrimination claims brought by children in school settings, effectively denies damages relief that schoolchildren would obtain under the deliberate-indifference standard. And, as already explained (at 10), *Monahan* goes far beyond what is demanded to establish entitlement to injunctive relief.

A. The *Monahan* standard is far more demanding than the deliberate-indifference standard generally applicable to damages claims under Section 504 and the ADA.

Under *Monahan*, a claim under Section 504 and the ADA requires "something more than a mere failure to provide the 'free appropriate education' required by [the IDEA]." *Monahan v. Nebraska*, 687 F.2d 1164, 1170 (8th Cir. 1982). The "something more" required by *Monahan* is "bad faith or gross misjudgment." *Id.* at 1171. This standard is "extremely difficult to meet, especially given the great deference to which local school officials' educational judgments are entitled." *Doe v. Arlington Cnty. Sch. Bd.*, 41 F. Supp. 2d 599, 609 (E.D. Va. 1999). "So long as the state officials involved have exercised professional judgment, in such a way as not to depart grossly from accepted standards among educational professionals," there is no bad faith or gross misjudgment. *Monahan*, 687 F.2d at 1171. As the cases described below (at 17-19) demonstrate, this standard of extreme deference is routinely used to excuse statutory violations by school officials and deny schoolchildren a remedy under Section 504 and the ADA.

In contrast, as explained earlier (at 10), generally, a plaintiff seeking injunctive relief under Section 504 and the ADA need only show a statutory violation and not that the defendant intended to discriminate. And to recover compensatory damages under those statutes, a plaintiff generally must show deliberate indifference. *See S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 262 (3d Cir. 2013) (collecting cases). Deliberate indifference requires only that the defendant knew that a federally

protected right was likely to be harmed and that the defendant failed to act to prevent that harm. *See id.*; *see also City of Canton v. Harris*, 489 U.S. 378, 389 (1989). Another articulation of deliberate indifference requires an actor to "disregard[] a known or obvious consequence of his action." *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410 (1997). As we now show, this standard is far more achievable than the bad-faith-or-gross-misjudgment standard and, as a result, provides far greater protection for schoolchildren with disabilities.

B. The *Monahan* standard harms schoolchildren who seek damages under Section 504 and the ADA.

Requiring schoolchildren with disabilities to surmount the *Monahan* standard means denying relief to countless children who would have qualified for damages under a deliberate-indifference standard. The petitioner here, Ava, is an example. The Eighth Circuit acknowledged that Ava presented evidence that her school district had been "negligent or even deliberately indifferent" in refusing to provide evening instruction to accommodate her epilepsy, which causes frequent seizures in the morning. Pet. App. 3a; Pet. 8-9. Yet the bad-faith-or-gross-misjudgment standard meant she could not be made whole for the harm she suffered.

Ava is not alone. Over the decades since *Monahan*, children across the country have been denied relief because they were unable to show that the mistreatment they endured was the result of a school

district's bad faith or gross misjudgment.[4] A sampling of those cases follows.

Cherry's story: *Heidemann v. Rother*, 84 F.3d 1021 (8th Cir. 1996). One of the children harmed by the *Monahan* rule is Cherry, a nine-year-old nonverbal child with physical and intellectual disabilities. *Id.* at 1025. Cherry was repeatedly subjected to what her teachers called "blanket wrapping." *Id.* The teachers, purportedly in an attempt to calm her, would bind Cherry so tightly that she could not use her arms, hands, legs, or feet. *Id.* Sometimes, Cherry would be blanket-wrapped for over an hour straight. *Id.* at 1026. Cherry's mom, June, sued the school district under the IDEA and Section 504 after discovering her daughter bound on the floor, with flies crawling in and around her mouth and nose. *Id.* The blanket was wrapped so tightly that June was unable to free Cherry on her own. *Id*

Bound by *Monahan*, the Eighth Circuit determined that the school district's misconduct did not constitute bad faith or gross misjudgment because school officials "did not depart grossly from acceptable standards among qualified professionals." *Id.* at 1032. Despite expert testimony from therapists that blanket wrapping should be used for no more than ten minutes, the court found that because a licensed professional recommended the practice, the *Monahan* standard had not been met. *Id.* at 1030 n.6. Whether that ruling was correct or not, there is little doubt that

[4] A Westlaw search reveals that several hundred decisions have cited *Monahan* since it was decided in 1982, and many more have cited the bad-faith-or-gross-misjudgment standard without citing *Monahan*.

Cherry would have succeeded under a deliberate-indifference standard. By leaving Cherry bound on the floor for over an hour, unable to move, with flies crawling in her mouth, her teachers demonstrated deliberate indifference by blatantly disregarding her obvious suffering.

Kristopher's story: ***Sellers ex rel. Sellers v. Sch. Bd. of Manassas*, 141 F.3d 524 (4th Cir. 1998).** Kristopher was also denied relief under the bad-faith-or-gross-misjudgment standard. Because Kristopher's learning disability and emotional disorder went undiagnosed until his senior year of high school, he was denied life-changing interventions for the majority of his K-12 education. *Id.* at 525. Kristopher's family sued the school district under the IDEA and Section 504, alleging that his poor test scores, beginning as early as fourth grade, should have alerted the school to his learning disability, which went undiagnosed for nearly a decade. *Id.* Kristopher could not, the court held, recover compensatory damages under Section 504. *Id.* Citing judicial "reluctan[ce] to find in mis-diagnoses the evidence of bad faith or gross misjudgment sufficient to support a discrimination claim under Section 504," the court characterized the claim as "nothing more" than a failure to diagnose and, thus, not cognizable under *Monahan*. *Id.* at 529.

Had the court applied a deliberate-indifference standard, however, Kristopher almost surely would have been awarded damages given the many years that the school disregarded his academic struggles. Recall that, in non-*Monahan* jurisdictions, to establish deliberate indifference, a plaintiff need prove only that the defendant "knew that harm to a federally

protected right was substantially likely and that the defendant failed to act on that likelihood." *H. ex rel. T.H. v. Montgomery Cnty. Bd. of Educ.*, 784 F. Supp. 2d 1247, 1262 (M.D. Ala. 2011). Thus, a school may be deliberately indifferent if it "simply ignores the needs of special education students," including by failing to update a student's accommodations in light of poor grades. *Id.* at 1263. The school was aware of the possibility that Kristopher had a learning disability based on his fourth-grade test scores, *Sellers,* 141 F.3d at 525, but simply ignored his needs for years, seriously impairing his future educational and vocational opportunities.

A.B.'s story: *Holmes-Ramsey ex rel. A.B. v. District of Columbia*, 747 F. Supp. 2d 32 (D.D.C. 2010). In a similar case, A.B., a child with learning and speech disabilities, was not evaluated for an IEP until well after the IDEA demanded it. *Id.* at 35-36. As a result, A.B. was placed in a school without special-education services. *Id.* at 36. The school district also failed to provide A.B. with necessary speech and language-education services. *Id.* The court found that these claims, "though serious, amount to garden variety IDEA violations," not gross misjudgment. *Id.* at 39. That is, under *Monahan*, known statutory violations went unremedied. A deliberate-indifference standard, on the other hand, contemplates recovery in this circumstance. By failing to evaluate A.B. and develop an IEP, despite the need to do so, the school knew her federally protected rights were substantially at risk yet failed to protect her. That's classic deliberate indifference. *See T.H.*, 784 F. Supp. 2d at 1262.

D.A.'s story: *D.A. ex rel. Latasha A. v. Hous. Indep. Sch. Dist.*, 629 F.3d 450 (5th Cir. 2010). Consider, too, D.A., a child denied special-education services for several years despite ample evidence that he struggled in school. *Id.* at 452. His pre-kindergarten teachers immediately noticed that he had difficulty completing work and following directions. *Id.* Yet he was advanced to kindergarten, where his teachers again noticed that he was struggling and warned that he might need to repeat kindergarten. *Id.* Once again, the school advanced D.A., still declining to evaluate him for an IEP and concluding that his problems were insufficiently documented. *Id.* From the start of first grade, D.A. exhibited significant behavioral challenges, including frequent outbursts that escalated to physical altercations. *Id.* Instead of providing appropriate interventions, the school isolated him, separating his desk from those of his peers. *Id.* Halfway through first grade, D.A. still had not been evaluated for an IEP, so his mom placed him in another school where he was immediately evaluated for an IEP. *Id.* In assessing D.A.'s Section 504 claim under the bad-faith-or-gross-misjudgment standard, the court held that the school district's attempts to discipline D.A., rather than evaluate him for a disability, were "well intended" and that its delay in evaluating him "demonstrates at most misjudgment, not bad faith." *Id.* at 455.

D.A.'s claims would have survived under a deliberate-indifference standard. Indeed, a four-month delay in providing testing accommodations in a university setting—where *Monahan* has never applied—supported a conclusion that the university "acted with deliberate indifference to a strong

likelihood that Plaintiff's rights under [Section 504] would be violated." *Segev v. Lynn Univ., Inc.*, 2021 WL 1996437, at *4 (S.D. Fla. May 19, 2021). By contrast, D.A. did not receive accommodations for three years. *See D.A.*, 629 F.3d at 452. In failing to evaluate D.A. in the face of his consistent academic and behavioral difficulties, which were so obvious that his new school immediately evaluated him for accommodations, *id.*, the school district ignored the near certainty that D.A.'s federal rights were being violated for three years. That, too, is deliberate indifference.

C.W.'s story: *Reid-Witt ex rel. C.W. v. District of Columbia*, 486 F. Supp. 3d 1 (D.D.C. 2020). C.W., a ninth-grade student, was diagnosed with anxiety and depression. *Id.* at 3. After C.W.'s hospitalization for mental-health treatment, her mom asked the school district to create an IEP allowing her to complete school from home or the hospital. *Id.* at 4. The district ignored that request. *Id.* After C.W. returned to school, the district determined that C.W. was ineligible for home study and, instead, established an educational plan that, among other things, permitted C.W. to drop courses. *Id.* As a result, C.W. missed more than two months of ninth grade. *Id.* Then, before C.W. started tenth grade, the district formally denied her special-education services and failed to change her educational plan. *Id.* C.W. missed more than two months of tenth grade and nearly all of eleventh grade. *Id.* Yet, the school district continued to deny her mom's requests for special-education services and eventually asked C.W. to transfer to a less competitive high school because of her low grades and inability to meet community-service requirements. *Id.*

C.W. then sued under the IDEA and sought damages under Section 504 and the ADA. The court held that the school district's failure to grant C.W. home-study accommodations or update her educational plan "amount[ed] to 'garden variety IDEA violations,'" so it failed the bad-faith-or-gross-misjudgment standard. *Reid-Witt*, 486 F. Supp. 3d at 10 (citing *Holmes-Ramsey*, 747 F. Supp. 2d at 39). At the same time, the court acknowledged that the "failure to update a student's [educational plan] three years in a row"—that is, exactly what happened to C.W.—"could constitute deliberate indifference." *Id.* at 9 (citation omitted). Put differently, C.W.'s accommodations clearly were not working—and the school district's decision to ignore that was, once again, deliberate indifference.

J.T.'s story: *J.T. ex rel. A.T. v. Chesapeake City Sch. Bd.*, 2023 WL 11891777 (E.D. Va. Mar. 17, 2023). J.T., an eleven-year-old with attention deficit hyperactivity disorder and dyslexia, could not read at grade level from kindergarten through fourth grade. *Id.* at *1-2. When J.T. was in fourth grade, her school closed in response to the pandemic. *Id.* At the beginning of fifth grade, her school transitioned to virtual learning. *Id.* By the end of the year, the school determined that her purported academic achievement made her ineligible for an IEP. *Id.* She sued the school for artificially inflating her grades to cover up their failure to educate her, seeking damages under Section 504 and the ADA. *Id.* at *3, *7. The court rejected her claims because she did not describe how the school's actions could constitute bad faith or gross misjudgment. *Id.* at *7. But the school knew, based on J.T.'s years of below-grade-level literacy, that denying

accommodations would put her rights at risk. *Id.* at *1-2. So, when it inflated her grades to the point that she was ineligible for accommodations, it failed to avoid that risk. For that reason, J.T.'s Section 504 and ADA claims would have survived under a deliberate-indifference standard.

* * *

These stories are just a small sample of the many decisions distorted by the bad-faith-or-gross-misjudgment standard. As shown, many students who were denied relief under *Monahan* would have prevailed under the less-demanding deliberate-indifference standard. *Monahan* has been employed for decades to excuse chronic failures to accommodate and educate children with disabilities, causing concrete, unremedied harm to some of the most vulnerable children in our Nation's public schools.

C. The *Monahan* standard also harms schoolchildren whose Section 504 and ADA claims are untethered to the IDEA.

The IDEA "concerns only the[] schooling" of children with disabilities, aiming "to provide each child with meaningful access to education." *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170 (2017). As shown earlier (at 13-15), Section 504 and the ADA remedy injuries beyond those remedied by the IDEA and "authorize individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or money damages." *Id.* at 160. Thus, schoolchildren with disabilities—some of whom do not qualify for special education under the

IDEA—bring Section 504 and ADA challenges that are unrelated to the IDEA.[5]

As discussed above (at 10), outside the K-12 education context, courts generally require a showing of only deliberate indifference to support a Section 504 or ADA compensatory-damages claim (and, again, do not demand a showing of intent to obtain injunctive relief). But in circuits where *Monahan* reigns, courts require schoolchildren to meet the "impossibly high bar" of bad faith or gross misjudgment simply because they experience discrimination in a K-12 school. *Knox Cnty. v. M.Q.*, 62 F.4th 978, 1002 (6th Cir. 2023).

The *Monahan* standard, as wrong as it is when applied to *any* Section 504 or ADA claim, is premised on the court's purported "duty to harmonize the Rehabilitation Act and the [IDEA] to the fullest extent possible." *Monahan*, 687 F.2d at 1171. Imposing that standard on children whose discrimination claims have nothing to do with the IDEA is even more illogical and unjust than the standard itself, as it lacks any connection to *Monahan*'s policy justification, as the following examples show.[6]

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[5] *See e.g.*, *Piotrowski ex rel. J.P. v. Rocky Point Union Free Sch. Dist.*, 462 F. Supp. 3d 270 (E.D.N.Y. 2020) (concerning Section 504 and ADA claims for failure to accommodate medical needs of a student with diabetes); *A.K.B. ex rel. Silva v. Indep. Sch. Dist. 194*, 2020 WL 1470971 (D. Minn. Mar. 26, 2020) (concerning damages under Section 504 and the ADA for a school's inadequate response to a student's asthma attack).

[6] Some courts in the circuits that have adopted *Monahan* recognize the irrationality of this position and require only a

Jacob's story: *Todd v. Elkins Sch. Dist. No. 10*, 1998 WL 199636 (8th Cir. Apr. 27, 1998). Jacob, a fourth-grade student with muscular dystrophy, used a wheelchair. *Id.* at *1. Jacob's teachers allowed fellow students to push his wheelchair to recess. *Id.* One day, while a classmate pushed him over uneven ground to recess, Jacob fell from his wheelchair, breaking his leg and sustaining permanent injuries. *Todd v. Elkins Sch. Dist. No. 10*, 1997 WL 7551, at *1 (8th Cir. Jan. 10, 1997). Jacob sued the school under Section 504, seeking compensatory damages for a range of harms, including diminished mobility, loss of future earning capacity, and the likelihood of shortened life expectancy. *Id.*

Though Jacob did not bring (and presumably could not sustain) an IDEA claim, the court applied *Monahan*'s heightened standard to his Section 504 claim. *Id.* at *1; *see also Todd*, 1998 WL 199636, at *1. Even though Jacob's teachers, the court blithely noted, "may have misjudged Jacob's transportation needs," that did not "amount to such a substantial departure from accepted professional judgment" as to meet the bad-faith-or-gross-misjudgment standard. *Todd*, 1998

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showing of deliberate indifference when the plaintiff's damages claims are not premised on failures to provide IDEA-type educational services. *See*, *e.g.*, *Shirey ex rel. Kyger v. City of Alexandria Sch. Bd.,* 2000 WL 1198054, at *5 (4th Cir. Aug. 23, 2000); *K.G. ex rel. Gosch v. Sergeant Bluff-Luton Cmty. Sch. Dist.*, 244 F. Supp. 3d 904, 929 (N.D. Iowa 2017); *A.P. ex rel. Peterson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 538 F. Supp. 2d 1125, 1145-46 (D. Minn. 2008); *B.M. ex rel. S.M. v. Bd. of Educ. of Scott Cnty.*, 2008 WL 4073855, at *8 n.8 (E.D. Ky. Aug. 29, 2008).

WL 199636, at *1. Accordingly, the court denied relief under Section 504. *Id.*

Under a deliberate-indifference standard, however, Jacob should have prevailed and received the much-needed compensatory damages he sought. His teachers ignored the clear risk of allowing students to push a vulnerable student over rough ground, directly resulting in Jacob's injury.

Rebecca's story: *Hoekstra ex rel. Hoekstra v. Indep. Sch. Dist. No. 283*, 103 F.3d 624 (8th Cir. 1996). Rebecca, a fourteen-year-old student, had a disability that made it painful to use stairs. *Id.* at 625-26. Based on her physical therapist's advice, Rebecca requested a key to the school's only elevator, a lift specially designed so that it could be used safely by a student in a wheelchair. *Id.* at 626. The school refused to provide her with a key for three months, so she had to find an adult to supervise her every time she needed to use the lift, undermining her independence and the full enjoyment of the education that her non-disabled peers enjoyed. *Id.*; *Hoekstra ex rel. Hoekstra v. Indep. Sch. Dist. No. 283,* 916 F. Supp. 941, 944 (D. Minn. 1996).

The court applied *Monahan* to Rebecca's claim under the ADA despite acknowledging that *Monahan* was based on the purported need to balance the IDEA and Section 504—and even though the IDEA was not at issue in the case. *Id.* at 627. The court found no bad faith or gross misjudgment, deferring to the school's explanation that it needed three months to establish criteria for the safe and independent operation of the lift. *Id.* Absent the *Monahan* standard, Rebecca could have obtained an injunction, and she could have obtained damages under a deliberate-indifference

standard. After all, for three months, Rebecca's school ignored the likelihood that her ADA rights were being violated and took no steps to provide an appropriate remedy.

I.A.'s story: *I.A. v. Seguin Indep. Sch. Dist.*, 881 F. Supp. 2d 770 (W.D. Tex 2012). I.A. used a wheelchair in school. *Id.* at 773. From third grade to sixth grade, his school repeatedly failed to accommodate him. *Id.* at 773-75. His teachers excluded him from part of a field trip, as well as from playing floor hockey, swimming, and performing at a band concert. *Id.* at 774-75. One of I.A.'s teachers humiliated him in front of his peers by asking about his bathroom needs. *Id.* at 780. I.A.'s school facilities were inaccessible: He did not have adequate access to bathrooms; the desks he was provided did not allow him to see his teachers; the playgrounds and tennis courts were inaccessible; the school buses lacked accommodations for wheelchairs; the school building lacked curb cuts; and the only ramp to the sidewalk was often blocked. *Id.* at 775.

Even though I.A. was ineligible for special education under the IDEA, the court applied the *Monahan* standard to his Section 504 claims. *Id.* at 777. The court acknowledged that "mistakes may have been made," but believed that none of the discriminatory treatment rose to the level of bad faith or gross misjudgment. *Id.* at 784.

But I.A.'s school knew for three years that its facilities were inadequate and that I.A.'s teachers did not include I.A. in activities with his peers. For months leading up to and at the start of I.A.'s sixth-grade year, the school knew that no safety or mobility plans were in place. *Id.* at 780-81. These problems created an

obvious risk that I.A.'s rights were being violated, and for three years, the school refused to act to eliminate or mitigate that risk. That is textbook deliberate indifference.

* * *

In much of the country, the *Monahan* bad-faith-or-gross-misjudgment standard poses an exceptionally high bar to schoolchildren seeking to obtain damages under Section 504 or the ADA. Wherever the standard is applied, children in K-12 schools are harmed. That is so because, as amici have shown, many Section 504 and ADA damages claims that fail under that standard would be vindicated under the deliberate-indifference standard that applies outside of the K-12 setting. And that *Monahan* has bled beyond the context for which it was intended—discrimination claims related to IDEA violations—is particularly concerning and particularly irrational. In sum, it is unlawful, arbitrary, and unjust to apply this heightened standard to children who face disability discrimination only because that discrimination occurred in a K-12 school.

Conclusion

This Court should reverse.

Respectfully submitted,

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