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CHAPTER 1
EDUCATING STUDENTS WITH DISABILITIES: CORE LEGAL CONCEPTS

PAGE 5, insert after the paragraph following "Notes and Questions":

This chapter highlights some of IDEA's most important provisions. Federal regulations also matter. The U.S. Department of Education issues regulations to interpret and enforce IDEA. In light of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), discarding the doctrine of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and diminishing the deference that federal courts need to pay to federal agencies' regulations that interpret statutes enacted by Congress, questions might be raised whether some of the IDEA regulations might be challenged as improper. IDEA is unusual, however, in that in a provision from the 1980s Congress explicitly endorsed existing regulations providing protections to students. 20 U.S.C. § 1406(b) states:

> The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter that--
> . . .
> (2) procedurally or substantively lessens the protections provided to children with disabilities under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

Section 504 of the Rehabilitation Act and title II of the Americans with Disabilities Act are also discussed in this chapter, and have their own interpretive regulations. Title II of the ADA carries a congressional endorsement of specified regulations applicable to section 504 in the form of a direction to the Attorney General to create ADA regulations consistent with those regulations. 42 U.S.C. § 12134(b).

CHAPTER 2
CHILD-FIND AND EVALUATION

PAGE 64, add to the end of the material on section 504:

A noteworthy case from the Third Circuit points out that since the coverage of children under section 504 differs from that under IDEA, a school district's compliance with IDEA child-find does not necessarily imply compliance with section 504 child-find. *B.S.M. v. Upper Darby Sch. Dist*., 103 F.4th 956 (3d Cir. 2024) (remanding case for consideration of section 504 child-find and evaluation claim).

PAGE 127, in line 21 before "*But see D.F. v. Leon Cnty. Sch. Dist.*, insert:

; *see also J.B. Kyrene Elementary Sch. Dist. No. 28*, 112 F.4th 1156 (9th Cir. 2024) (holding that refusal to consent to evaluation while student was in private school relieved district of further obligations under IDEA).

PAGE 136, add to the end of the first partial paragraph:

The Tenth Circuit has held that after parents in 2018 requested and obtained an IEE at public expense in the areas of speech and language and occupational therapy in response to an August 2017 triennial evaluation of their child, they were not entitled to an IEE at public expense for a neuropsychological evaluation. *Alex W. v. Poudre Sch. Dist. R-1*, 94 F.4th 1176 (10th Cir. 2024). The court reasoned that 34 C.F.R. § 300.502(b)(5) limits the parent to only one IEE at public expense each time the public agency conducts an evaluation.

CHAPTER 3
ELIGIBILITY

PAGE 144, add to the end of the first partial paragraph:

Receipt of a GED and issuance of a state-issued diploma based on the GED will not necessarily terminate the right to continued secondary education if a preponderance of the state's students receive an ordinary, school board-issued diploma. *See Board of Educ. of Twp. of Sparta v. M.N.*, 318 A.3d 670 (N.J. 2024).

Additional cases concern policies terminating eligibility at the end of the school year in which the student turns 21, rather than continuing eligibility up to the 22nd birthday. *See N.D. v. Reykdal*, 102 F.4th 982 (9th Cir. 2024) (vacating denial of preliminary injunction against state policy terminating eligibility); *A.R. v. Connecticut State Bd. of Educ.*, 5 F.4th 155 (2d Cir. 2021) (invalidating state policy); *Katonah-Lewisboro Union Free Sch. Dist. v. New York State Educ. Dep't*, No. CV-24-0696, 2025 N.Y. App. Div. LEXIS 4270 (App. Div. July 17, 2025) (upholding state educational agency determination that to provide equivalent education opportunities for students with and without disabilities, school district should offer education services to students with disabilities up to their 22nd birthday); *Mahopac Cent. Sch. Dist. v New York State Educ. Dep't*, No. CV-25-0492, 2025 N.Y. App. Div. LEXIS 4260 (App. Div. July 17, 2025) (same). *But see Pennsylvania Sch. Bds. Ass'n v. Mumin*, 317 A.3d 1077 (Pa. Commw. Ct. 2024) (declaring

void state education department policy requiring provision of special education services up to 22nd birthday, on basis of state law concerning promulgation of regulations). The educational services for which students are eligible under IDEA must be preschool, elementary school, or secondary school education, and sometimes the services the parents desire for their students have been found to be post-secondary and so not covered by IDEA. *See Bradley v. Jefferson Cnty. Pub. Schs*., 88 F.4th 1190 (6th Cir. 2023); *Holland v. Kenton Cnty. Pub. Schs*., 88 F.4th 1183 (6th Cir. 2023). Post-secondary or post-age 22 services may be appropriate as a remedy for older students who have been denied appropriate education when younger, however. See Chapter 8, *infra* (discussing compensatory education remedies).

PAGE 146, add to the end of the second full paragraph:

In light of the broad definition of individual with a disability that is now incorporated in the ADA and section 504, a conclusion with regard to a student that the school district has not violated IDEA child-find duties does not necessarily mean that the district has complied with Section 504 child-find duties. *See B.S.M. v. Upper Darby Sch. Dist*., 103 F.4th 956 (3d Cir. 2024) (noting broader coverage of section 504 in comparison to IDEA and remanding case for determination whether school district violated section 504 child-find requirements by not conducting comprehensive section 504 evaluation at earlier time in accordance with parental requests). The court also found that the proposed IEP did not satisfy the least restrictive environment requirement even though it was to be implemented in a large school with many non-disabled students.

CHAPTER 4
FREE, APPROPRIATE PUBLIC EDUCATION

PAGE 238, add to the end of note 3:

A growing concern is that generative artificial intelligence (AI) technology has made it easier than ever to mask the fact that a student needs interventions to make genuine educational progress. In *William A. v. Clarksville-Montgomery Cnty. Sch. Sys.*, 127 F.4th 656 (6th Cir. 2025), a dyslexic student graduated from high school with a 3.4 GPA but still could not read. In fact, he could not even spell his own name. The student's IEPs remained similar over years despite his consistent inability to meet reading fluency goals and the recognition by a high school special education teacher that he could not read. When the student was in eleventh grade, the parent requested an evaluation for dyslexia and the evaluation confirmed the dyslexia diagnosis. The court of appeals affirmed the determination that the district denied the student FAPE, noting that the student relied on accommodations that hid the inability to read. By allowing the student 24 hours extra to complete all assignments, the school district permitted the student to do the work at home, using whatever technology he wished. Thus he wrote papers by dictating the topic into speech-to-text software, then pasting the words into generative AI software to create a paper, then pasting the text into the student's own document, and running the paper through a program like Grammarly, so it would conform to a proper style. The court declared,

"When a child is capable of learning to read, and his IEP does not aim to help him overcome his particular obstacles to doing so, that IEP does not provide him the 'free appropriate public education' to which he is entitled." *Id*. at 660. Do you agree that the district failed to offer the student FAPE under these circumstances?

PAGE 259, insert after note 3:

4. At times, the need to provide free, appropriate public education requires departure from longstanding operating procedures, including the traditional school day. *See Osseo Area Schs., Indep. Sch. Dist. No. 279 v. A.J.T.,* 96 F.4th 1062 (8th Cir. 2024) (upholding ruling that student with epilepsy whose seizures were so frequent in the morning that she could not attend class before noon must be offered services at school in the afternoon and home instruction in the evening).

PAGE 260, insert after the partial paragraph at the top of the page:

An intriguing variation on the relation between FAPE and LRE is found in *Los Angeles Unified Sch. Dist. v. A.O.*, 92 F.4th 1159 (9th Cir. 2024). In that case, which involved a young student with profound hearing loss who had cochlear implants, the Ninth Circuit affirmed the decision of an administrative law judge that the district's proposed IEP denied the student FAPE because it did not offer enough interaction with typically hearing peers for the student to make meaningful progress in spoken language. The court relied on expert testimony that recess, holiday parties, and other opportunities for mainstreaming in the IEP were not enough to allow sufficient progress for the student, even though the student was not yet ready for full-time mainstream instruction. The case is discussed in greater detail in Chapter 5.

PAGE 261, in line 9 before "In a variation on these cases" insert:

In a case where state law appeared to set out two contrary class size limits that could apply to a student, the Second Circuit certified to the New York Court of Appeals the question which one to use. *Cruz v. Banks*, 134 F.4th 687 (2d Cir. 2025), *certified question accepted*, 43 N.Y.3d 983 (May 20, 2025).

CHAPTER 5
INDIVIDUALIZED EDUCATION PROGRAM

PAGE 280, add to the end of the second full paragraph, after "34 C.F.R. § 300.324(a)(1)-(2).":

An IEP may be found to deny FAPE when it is predetermined, in the sense that it is firmly decided upon before the input of the parent. *See Boone v. Rankin Cnty. Pub. Sch. Dist*., 140 F.4th 697, 709 (5th Cir. 2025). This does not forbid the school district from developing a rough draft before the meeting, but the district must be flexible in responding to the parent's information and views.

PAGE 298, add to the end of note 2:

For an example of a material failure to implement an IEP, see *S.S. v. Bellflower Unified School District*, No. CV 20-9829-MWF, 2021 U.S. Dist. LEXIS 180444 (C.D. Cal. Sept. 3, 2021) (ruling that defendant failed materially in implementing the IEP of a teenaged blind student when it did not hire a teacher with credentials to provide direct academic instruction to students with visual impairments; giving account of teacher asking aide what instruction to provide).

Add to the end of note 3:

However, the Ninth Circuit has held that if the parents unilaterally place the student in a private school as part of a dispute with the school district over special education, the school district does not need to offer an updated IEP each year unless the parents ask for one. *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125 (9th Cir. 2021).

PAGE 332, insert after note 3 and renumber the subsequent notes accordingly:

4. In *Los Angeles Unified School District v. A.O.*, 92 F.4th 1159 (9th Cir. 2024), a case involving a young student who had profound hearing loss and made use of cochlear implants, the court upheld an administrative law judge ruling that sided with the parents on most issues. The IEP said that the student would receive language and speech therapy one to ten times per week and audiology services one to five times per month, and did not specify if the language and speech therapy would be group or individual. The court said the school district violated IDEA by failing to specify the frequency and duration of the audiology and speech and language services as required by 34 C.F.R. § 300.320(a)(7). The court also stressed evidence from the due process hearing that multiple short sessions of speech and language therapy would prevent targeting the skills the student needed. Although the IEP could provide for some flexibility, such as one to three sessions per week for a specified weekly total of minutes, one to ten sessions was too much leeway. The court noted that the ALJ found the parents did not understand how often the student would receive speech and language and audiology and so had trouble deciding if they agreed with the IEP; nor did the staff know what the frequency would be.

CHAPTER 6
THE LEAST RESTRICTIVE ENVIRONMENT

PAGE 378, add to the end of note 1:

One point of law on which courts of appeals appear to differ is whether a child may be removed from the mainstream when the child is unable, with supplementary aids and services, to understand the essential elements of the general education curriculum, or whether removal should not occur as long as the child can make progress, with supplementary aids and services, on the child's IEP goals. *Compare L.H.*, *supra*, *with H.W.*

v. Comal Indep. Sch. Dist., 32 F.4th 454, 469-70 (5th Cir. 2022) (disagreeing with *L.H.* on significance of progress on IEP goals for keeping child in mainstreamed setting).

CHAPTER 7
RELATED SERVICES AND ASSISTIVE TECHNOLOGY

PAGE 411, in line 5 before "Osseo Area Schs. v. M.N.B." insert:

Pierre-Noel v. Bridges Pub. Charter Sch., 113 F.4th 970 (D.C. Cir. 2024) (requiring district to provide school transportation services that include taking student using wheelchair for mobility to and from door of apartment in walk-up building); *Los Angeles Unified Sch. Dist. v. A.O.*, 92 F.4th 1159 (9th Cir. 2024) (finding that IEP providing that student would receive language and speech therapy one to ten times per week and audiology services one to five times per month, and failing to say if language and speech therapy would be group or individual violated IDEA by not specifying frequency and duration of audiology and speech and language services; relying on 34 C.F.R. § 300.320(a)(7) and evidence that multiple short sessions of speech and language would prevent targeting of needed skills);

PAGE 428, add to the end of the paragraph following "D. Assistive Technology ":

Might the regulations under the Americans with Disabilities Act, which require state and local government entities (including public schools) to honor requests for particular modes of communication unless the entities show another effective means of communication exists, impose greater duties regarding assistive technology than those imposed by IDEA? *See LePape v. Lower Merion Sch. Dist.*, 103 F.4th 966 (3d Cir. 2024) (holding that denial of the parents' request that the school district use "Spelling to Communicate" system for the student could violate ADA communication requirements even though the hearing officer ruled that the district's alternative communication methods met IDEA requirements and the parents did not appeal that ruling).

PAGE 429, add to the end of note 1:

See generally Assistive Technology Devices and Services for Children With Disabilities Under the IDEA, https://sites.ed.gov/idea/idea-files/at-guidance/ (U.S. Dep't of Educ. Office of Special Educ. Programs 2024) (providing that assistive technology should be included in the IEP and that it should be discussed whenever IEP teams meet to develop the IEP, and stressing the wide range of devices and services to consider, including technology to be used at home and in other locations away from school).

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CHAPTER 8
DUE PROCESS HEARINGS

PAGE 461, add to the end of note 2:

For an illuminating critique of applying a "snapshot rule" to IDEA child-find and eligibility cases, see Jennifer N. Rosen Valverde, *A Panoramic IDEA: Cabining the Snapshot Rule in Special Education Cases*, 55 ARIZ. ST. L.J. 1445 (2024) (collecting and analyzing authorities).

PAGE 462, add to the end of note 4:

The Office of Special Education Programs of the U.S. Department of Education has issued guidance stating that unless the parties to an IDEA due process hearing agree, motion to dismiss or summary judgment procedures to adjudicate the dispute without a hearing cannot be used (with the exception of dismissal for insufficiency of the complaint). *Letter to Zirkel*, https://sites.ed.gov/idea/files/osep-policy-letter-22-04-to-zyrkel-04-15-2022.pdf (OSEP Apr. 15, 2022) ("To the extent any summary proceedings in a hearing on a due process complaint - other than a sufficiency determination - limit, or conflict with, either party's rights, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, we believe such proceedings can be used only when both parties consent to use the summary process (e.g., cross-motions for summary judgment).").

PAGE 497, add to the end of note 1:

In reference to the *Burlington* and *Carter* language about applying equitable considerations in awarding tuition reimbursement, the Second Circuit has ruled that reviewing courts should make independent determinations and not give deference to determinations of hearing officers and review officers beyond whatever persuasive power the administrative rulings may have. *Ferreira v. Aviles-Ramos*, 120 F.4th 323 (2d Cir. 2024).

PAGE 514, add to the end of note 1:

; *see also N.G.B. v. New York City Dep't of Educ*., No. 23-764-cv, 2025 U.S. App. LEXIS 18374, *18 (July 24, 2025) ("Following the reasoning of the Third Circuit, we believe that it is inimical to the purpose of the IDEA to force prevailing parents to accept an offer that they reasonably and in good faith believe fails to provide adequate compensation.").

Add to the end of note 3:

For a special education case effectively adopting the same approach (but, oddly, not citing *Campbell-Ewald*), see *A.B. v. Brownsburg Community School Corp.*, 80 F.4th 805 (7th Cir. 2023) (remanding for consideration of attorneys' fees in a case where school district filed unilateral stipulation to provide all education-related relief demanded by parents, but parents never agreed to the stipulation, and the hearing officer issued a decision finding the student IDEA-eligible and ordering convening of a case conference committee).

CHAPTER 9
STUDENT DISCIPLINE

PAGE 562, insert after note 4:

5. In *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, https://sites.ed.gov/idea/idea-files/dcl-implementation-of-idea-discipline-provisions/ (OSERS July 19, 2022), the Office of Special Education and Rehabilitative Services of the U.S. Department of Education addresses, among other things, informal removals from school (Q. C-6: "Are informal removals, such as administratively shortened school days, considered a school day when calculating a disciplinary change in placement? IDEA's implementing regulations define school day as any day, including a partial day, that children attend school for instructional purposes. . . . In general, the use of informal removals to address a child's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement. Therefore, the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536 would generally apply unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement."). The document also discusses risk or threat assessments ("Q. E-5: When school personnel are conducting risk or threat assessments of a child with a disability, how must the LEA ensure FAPE is provided to the child? Under IDEA, the procedural safeguards and right to FAPE for a child with a disability must be protected throughout any threat or risk assessment process, including the provision of services during any removals beyond 10 cumulative school days in a school year. 34 C.F.R. §§ 300.101 and 300.530(d). States and LEAs should ensure that school personnel involved in screening for, and conducting, threat or risk assessments of children with disabilities are aware that the child has a disability and are sufficiently knowledgeable about the LEA's obligation to ensure FAPE to the child, including IDEA's discipline provisions." Seclusion and restraint are also discussed (Q. B-3: "Does the Office of Special Education Programs (OSEP) consider restraint or seclusion to be appropriate strategies for disciplining a child for behavior related to their disability? No. OSEP is not aware of any evidence-based support for the view that the use of restraint or seclusion is an effective strategy in modifying a child's behaviors that are related to their disability. The Department's longstanding position is that every effort should be made to prevent the need for the use of restraint or seclusion and that behavioral interventions must be consistent with the child's rights to be treated with dignity and to be free from abuse. Further, the Department's position is that restraint or seclusion should not be used except in situations where a child's behavior poses imminent danger of serious physical harm to themselves or others."). An accompanying Dear Colleague letter discusses racial disparities in suspensions and other discipline that leads to exclusion from school. On the topic of seclusion and restraint, see section F of this chapter.

PAGE 565, add to the end of the partial paragraph:

A source with links to relevant Department of Education documents is *Secretary's Letter on Restraint and Seclusion* (U.S. Sec'y of Educ., Jan. 8, 2025), https://www.ed.gov/laws-and-policy/key-policy-letters/secretarys-letter-restraint-and-seclusion.

CHAPTER 10
COURT PROCEEDINGS

PAGE 580, add to the paragraph at the bottom of the page:

The latter use of section 504 and title II claims may be limited by the Supreme Court's 2022 holding that section 504 and the provision of the Affordable Care Act incorporating the discrimination remedies of section 504 do not support an action for emotional distress damages. This holding may affect much of the material in this section.

CUMMINGS v. PREMIER REHAB KELLER
596 U.S. 212 (2022)

> *The court held that emotional distress damages are not recoverable in a private action to enforce either the Rehabilitation Act of 1973 or the Affordable Care Act.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Congress has broad power under the Spending Clause of the Constitution to set the terms on which it disburses federal funds. "[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981). Exercising this authority, Congress has passed a number of statutes prohibiting recipients of federal financial assistance from discriminating based on certain protected characteristics. We have held that these statutes may be enforced through implied rights of action, and that private plaintiffs may secure injunctive or monetary relief in such suits. *See Barnes v. Gorman*, 536 U.S. 181, 185, 187 (2002). Punitive damages, on the other hand, are not available. *Id*., at 189. The question presented in this case is whether another special form of damages—damages for emotional distress—may be recovered.

I

Petitioner Jane Cummings is deaf and legally blind, and communicates primarily in American Sign Language (ASL). In October 2016, she sought physical therapy services from respondent Premier Rehab Keller, a small business in the Dallas-Fort Worth area. Cummings requested that Premier Rehab provide an ASL interpreter at her appointments. Premier Rehab declined to do so, telling Cummings that she could communicate with the therapist using written notes, lip reading, or gesturing. Cummings then sought and obtained care from another provider.

Cummings later filed this lawsuit against Premier Rehab, alleging that its failure to provide an ASL interpreter constituted discrimination on the basis of disability in violation of the Rehabilitation Act of 1973, § 504, and the Patient Protection and Affordable Care Act, § 1557. Premier Rehab is subject to these statutes, which apply to entities that receive federal financial assistance, because it receives reimbursement through Medicare and Medicaid for the provision of some of its services. In her complaint, Cummings sought declaratory relief, an injunction, and damages.

The District Court dismissed the complaint. . . . The Court of Appeals for the Fifth Circuit affirmed . . . .

II

A

Pursuant to its authority to "fix the terms on which it shall disburse federal money," Congress has enacted four statutes prohibiting recipients of federal financial assistance from discriminating based on certain protected grounds. Title VI of the Civil Rights Act of 1964 forbids race, color, and national origin discrimination in federally funded programs or activities. Title IX of the Education Amendments of 1972 similarly prohibits sex-based discrimination, while the Rehabilitation Act bars funding recipients from discriminating because of disability. Finally, the Affordable Care Act outlaws discrimination on any of the preceding grounds, in addition to age, by healthcare entities receiving federal funds.

None of these statutes expressly provides victims of discrimination a private right of action to sue the funding recipient in federal court. But as to both Title VI and Title IX, our decision in *Cannon v. University of Chicago*, 441 U.S. 677, 703 (1979), "found an implied right of action." *Barnes*, 536 U.S. at 185. Congress later "acknowledged this right in amendments" to both statutes, leading us to conclude that it had "ratified Cannon's holding" that "private individuals may sue to enforce" both statutes. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *see also Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 72-73 (1992). As to the Rehabilitation Act and the Affordable Care Act—the two statutes directly at issue in this litigation—each expressly incorporates the rights and remedies provided under Title VI. 29 U.S.C. §794a(a)(2); 42 U.S.C. § 18116(a).

Although it is "beyond dispute that private individuals may sue to enforce" the antidiscrimination statutes we consider here, "it is less clear what remedies are available in such a suit." In *Franklin*, we considered whether monetary damages are available as a remedy for intentional violations of Title IX (and, by extension, the other statutes we discussed). We answered yes, but "did not describe the scope of 'appropriate relief.'"

Our later cases have filled in that gap, clarifying that our consideration of whether a remedy qualifies as appropriate relief must be informed by the way Spending Clause "statutes operate": by "conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds." *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 286 (1998). Unlike ordinary legislation, which "imposes congressional policy" on regulated parties "involuntarily," Spending Clause legislation operates based on consent: "in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Pennhurst*, 451 U.S. at 16, 17. . . .

"We have regularly applied th[is] contract-law analogy in cases defining the scope of conduct for which funding recipients may be held liable for money damages." *Barnes*, 536 U.S. at 186. Recipients cannot "knowingly accept" the deal with the Federal Government unless they "would clearly understand . . . the obligations" that would come along with doing so. *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 296 (2006). We therefore construe the reach of Spending Clause conditions with an eye toward "ensuring that the receiving entity of federal funds [had] notice that it will be liable." *Gebser*, 524 U.S. at 287. "Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst*, 451 U.S. at 17.

"The same analogy," *Barnes*, 536 U.S. at 187, similarly limits "the scope of available remedies" in actions brought to enforce Spending Clause statutes, *Gebser*, 524 U.S. at 287. After all, when considering whether to accept federal funds, a prospective recipient would surely wonder not only what rules it must follow, but also what sort of penalties might be on the table. A particular remedy is thus "appropriate relief" in a private Spending Clause action "only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature." Only then can we be confident that the recipient "exercise[d its] choice knowingly, cognizant of the consequences of [its] participation" in the federal program.

B

In order to decide whether emotional distress damages are available under the Spending Clause statutes we consider here, we therefore ask a simple question: Would a prospective funding recipient, at the time it "engaged in the process of deciding whether [to] accept" federal dollars, have been aware that it would face such liability? If yes, then emotional distress damages are available; if no, they are not.

Because the statutes at issue are silent as to available remedies, it is not obvious how to decide whether funding recipients would have had the requisite "clear notice regarding the liability at issue in this case." We confronted that same dynamic in *Barnes*. There, we considered whether a federal funding recipient would have known, when taking the money, that it was agreeing to face punitive damages in suits brought under those laws. We noted that the statutory text "contains no express remedies." But we explained that, following the contract analogy set out in our Spending Clause cases, a federal funding recipient may be considered "on notice that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract." We identified two such remedies: compensatory damages and injunctions. By contrast, we explained, punitive damages "are generally not available for breach of contract." We thus concluded that funding recipients covered by the statutes at issue "have not, merely by accepting funds, implicitly consented to liability for punitive damages."

Crucial for this case, we considered punitive damages to be "generally not available for breach of contract," despite the fact that such damages are hardly unheard of in contract cases. Indeed, according to the treatises we cited, punitive damages are recoverable in contract where "the conduct constituting the breach is also a tort for which punitive damages are recoverable." Restatement (Second) of Contracts § 355, p. 154 (1979); *see also* 3 E. Farnsworth, Contracts §12.8, pp. 192-201 (2d ed. 1998). That recognized

exception to the general rule, however, was not enough to give funding recipients the requisite notice that they could face such damages.

Under *Barnes*, then, we may presume that a funding recipient is aware that, for breaching its Spending Clause "contract" with the Federal Government, it will be subject to the usual contract remedies in private suits. That is apparent from the adverbs *Barnes* repeatedly used, requiring that a remedy be "traditionally available," "generally . . . available," or "normally available for contract actions." And it is confirmed by the Court's holding: that punitive damages are unavailable in private actions brought under these statutes even though such damages are a familiar feature of contract law.

C

Under the framework just set out, the analysis here is straightforward. It is hornbook law that "emotional distress is generally not compensable in contract," D. Laycock & R. Hasen, Modern American Remedies 216 (5th ed. 2019), just as "punitive damages . . . are generally not available for breach of contract," *Barnes*, 536 U.S. at 187. *See* 11 W. Jaeger, Williston on Contracts § 1341, p. 214 (3d ed. 1968) ("Mental suffering caused by breach of contract, although it may be a real injury, is not generally allowed as a basis for compensation in contractual actions."); E. Farnsworth, Contracts § 12.17, p. 894 (1982) (describing rule of "generally denying recovery for emotional disturbance, or 'mental distress,' resulting from breach of contract" as "firmly rooted in tradition"); J. Perillo, Calamari & Perillo on Contracts § 14.5, p. 495 (6th ed. 2009) (Calamari & Perillo) ("As a general rule, no damages will be awarded for the mental distress or emotional trauma that may be caused by a breach of contract."); C. McCormick, Law of Damages § 145, p. 592 (1935) (McCormick) ("It is often stated as the 'general rule' that, in actions for breach of contract, damages for mental suffering are not allowable."). Under *Barnes*, we therefore cannot treat federal funding recipients as having consented to be subject to damages for emotional distress. It follows that such damages are not recoverable under the Spending Clause statutes we consider here.

In arguing for a different result, Cummings recognizes that "contract law dictates 'the scope of damages remedies.'" . . . But Cummings then argues that, notwithstanding the above authorities, "traditional contract remedies" in fact do "include damages for emotional distress."

That is because, Cummings explains, several contract treatises put forth the special rule that "recovery for emotional disturbance" is allowed in a particular circumstance: where "the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." And, she contends, such a rule "aptly describe[s the] intentional breach of [a] promise to refrain from discrimination," because discrimination frequently engenders mental anguish. This argument suffers from two independently fatal flaws.

First, Cummings subtly but crucially transforms the contract-law analogy into a test that is inconsistent with both *Barnes* and our larger Spending Clause jurisprudence. *Barnes*, recall, instructs us to inquire whether a remedy is "traditionally," "generally," or "normally available for contract actions." Cummings, however, would look not only to those general rules, but also to whether there is a "more fine-grained" or "more directly applicable" rule of contract remedies that, although not generally or normally applicable, "govern[s] in the specific context" or "particular setting[ ]" of the pertinent Spending Clause provision. In

other words, Cummings would treat funding recipients as on notice that they will face not only the usual remedies available in contract actions, but also other unusual, even "rare" remedies, if those remedies would be recoverable "in suits for breaches of the type of contractual commitments at issue."

Neither petitioner nor the United States attempts to ground this approach in *Barnes*, which, as discussed above, undertook nothing of the sort. Indeed, had *Barnes* analyzed the question as petitioner frames it, the decision would have come out the opposite way. As noted, although the general rule is that punitive damages are not available in contract, they are undoubtedly recoverable in cases where the breaching conduct is also "a tort for which punitive damages are recoverable." Restatement (Second) of Contracts § 355. Such conduct would presumably include "breaches of the type of contractual commitments at issue here," namely, the commitment not to discriminate. After all, intentional discrimination is frequently a wanton, reprehensible tort. *Barnes* itself involved "tortious conduct," 536 U.S. at 192 (Stevens, J., concurring in judgment), that the jury had found deplorable enough to warrant $1.2 million in punitive damages. Yet *Barnes* necessarily concluded that the existence of this on-point exception to the general rule against punitive damages was insufficient to put funding recipients on notice of their exposure to that particular remedy.

Compare in this regard the Restatement's discussion of emotional distress damages with its discussion of punitive damages:

> "**Loss Due to Emotional Disturbance**
>
> "Recovery for emotional disturbance will be excluded *unless* . . . the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." § 353 (emphasis added).
>
> "**Punitive Damages**
>
> "Punitive damages are not recoverable for a breach of contract *unless* the conduct constituting the breach is also a tort for which punitive damages are recoverable." § 355 (emphasis added).

It did not matter to the Court in *Barnes* that the second clause of section 355 "aptly describe[s] a funding recipient's intentional breach of its promise to refrain from discrimination." Brief for Petitioner 31. *Barnes* did not even engage in such an inquiry; it simply stopped at the word "unless." Neither Cummings nor the United States adequately explains why we—bound by *Barnes*—should do anything different here. Indeed, reflected in the Restatement's similar treatment of emotional distress and punitive damages is the fact that "the line between these two kinds of damages is indistinct and hard to draw." 11 J. Perillo, Corbin on Contracts § 59.1, p. 546 (rev. 11th ed. 2005) (Corbin); *see also* D. Dobbs, Law of Remedies § 12.4, p. 819 (1973) (Dobbs).

Beyond *Barnes* itself, petitioner's "more fine-grained" approach cannot be squared with our contract analogy case law in general. [O]ur cases do not treat suits under Spending Clause legislation as literal "suits in contract," *Sossamon v. Texas*, 563 U.S. 277, 290 (2011), subjecting funding recipients to whatever "governing rules" some general federal law of contracts would supply.

Rather, as set out above, we employ the contract analogy "only as a potential limitation on liability" compared to that which "would exist under nonspending statutes." We do so to ensure that funding recipients "exercise[d] their choice" to take federal dollars "knowingly, cognizant of the consequences of" doing so. *Pennhurst*, 451 U.S. at 17. Here, the statutes at issue say nothing about what those consequences will be. Nonetheless, consistent with *Barnes*, it is fair to consider recipients aware that, if they violate their promise to the Government, they will be subject to either damages or a court order to perform. Those are the usual forms of relief for breaching a legally enforceable commitment. No dive through the treatises, 50-state survey, or speculative drawing of analogies is required to anticipate their availability.

The approach offered by Cummings, by contrast, pushes the notion of "offer and acceptance" past its breaking point. It is one thing to say that funding recipients will know the basic, general rules. It is quite another to assume that they will know the contours of every contract doctrine, no matter how idiosyncratic or exceptional. Yet that is the sort of "clear notice" that Cummings necessarily suggests funding recipients would have regarding the availability of emotional distress damages when "engaged in the process of deciding whether" to accept federal funds. *Arlington*, 548 U.S. at 296. Such a diluted conception of knowledge has no place in our Spending Clause jurisprudence.

What is more, by essentially incorporating the law of contract remedies wholesale, Cummings's rendition of the analogy "risks arrogating legislative power." *Hernández v. Mesa*, 140 S. Ct. 735 (2020). Recall that *Barnes* authorized the recovery of "remedies traditionally available in suits for breach of contract" under Spending Clause statutes, like those we consider here, that "mention[ ] no remedies." *Barnes* thus permitted federal courts to do something we are usually loath to do: "find[ ] that a [certain] remedy is implied by a provision that makes no reference to that remedy," But *Barnes* also placed a clear limit on that authority, constraining courts to imply only those remedies "that [are] normally available for contract actions." In urging us to disregard that restriction, Cummings would have us treat statutory silence as a license to freely supply remedies we cannot be sure Congress would have chosen to make available. That would be an untenable result in any context, let alone one in which our cases require "clear notice regarding the liability at issue."

Second, even if it were appropriate to treat funding recipients as aware that they may be subject to "rare" contract-law rules that are "satisfied only in particular settings," funding recipients would still lack the requisite notice that emotional distress damages are available under the statutes at issue. That is because the Restatement's formulation—that such damages are available where "the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result," see Restatement (Second) of Contracts § 353—does not reflect the consensus rule among American jurisdictions.

Far from it. As one commentator concluded after "[s]urveying all of the cases dealing with emotional distress recovery in contract actions" over a decade after the Restatement's publication, "a majority rule does not exist" on the question. D. Whaley, Paying for the Agony: The Recovery of Emotional Distress Damages in Contract Actions, 26 Suffolk U. L. Rev. 935, 946 (1992). . . . The contrary view of the dissent, see post, at 4-7, is more aspirational than descriptive.

To be sure, a number of States follow the Restatement rule and award emotional distress damages "where the injury entails more than a pecuniary loss, and the duty violated is closely associated with the feelings and emotions of the injured party." Chmiel, 32 Notre Dame Law., at 482. That represents "the most liberal approach," Whaley, 26 Suffolk L. Rev., at 943, taken by a "strong minority" of courts, Corbin § 59.1, at 541; *see also* McCormick § 145, at 594-595. On the opposite end of the spectrum, however, several States squarely reject the Restatement, and altogether forbid recovery of emotional distress damages even where the contract relates to nonpecuniary matters.

Most States reject the Restatement exception in a more nuanced way: by limiting the award of emotional distress damages to a narrow and idiosyncratic group of cases, rather than making them available in general wherever a breach would have been likely to inflict emotional harm. Calamari & Perillo § 14.5, at 495-496. . . .

These jurisdictions confine recovery for mental anguish where nonpecuniary contracts are at issue in two main ways. First, a number permit recovery only if the breach also qualifies as "unusually evil," with the precise terminology varying from "reckless" and "willful" to "wanton" and "reprehensible." D. Hoffman & A. Radus, Instructing Juries on Noneconomic Contract Damages, 81 Fordham L. Rev. 1221, 1227 (2012) (emphasis deleted); *see* Corbin § 59.1, at 546-547; Chmiel, 32 Notre Dame Law., at 484-485.

Second, many States limit recovery for mental anguish to only a narrow "class of contracts upon breach of which the injured party may, if he so elect, bring an action sounding in tort." Such cases most prominently include those "against carriers, telegraph companies, and innkeepers—all of whom are bound by certain duties that are independent of contract, but who usually also have made a contract for the performance of the duty." Others involve "contracts for the carriage or proper disposition of dead bodies," Restatement (Second) of Contracts § 353, Comment a, which similarly might be seen "as tort cases quite apart from the contract, since one who negligently mishandles a body could be liable in tort . . . even if there were no contract at all." Dobbs § 12.4, at 819.

Many of these cases unsurprisingly mix contract, quasi-contract, and tort principles together. Dobbs, § 12.4, at 818, n. 10 ("The carrier who insults his passenger is liable to him in tort . . . but cases often speak of an implied term in the contract as governing this point.").* As such, it makes little sense to treat such cases as establishing or evincing a rule of contract law—a principle with which the United States agrees, Brief for United States as Amicus Curiae 31, n. 5 (arguing that cases "based on tort principles" are "not instructive" for purposes of the contract-law analogy).

In the end, it is apparent that the closest our legal system comes to a universal rule—or even a widely followed one—regarding the availability of emotional distress damages in contract actions is "the conventional wisdom . . . that [such] damages are for highly unusual

*The dissent cites McCormick for the proposition that courts did not "always" rely on "accompanying tortious conduct" when allowing recovery of emotional distress damages in the innkeeper, telegraph, and burial cases. That misses the point. As McCormick's next sentence explains, the award of emotional distress damages in such cases was "made easier because usually the action could have been brought as for a tort, in which event the tradition against allowing damages for mental distress would be plainly inapplicable.". Put differently, the usual rule barring recovery was not applicable in this idiosyncratic set of cases because, like cases in which punitive damages were awarded, they were "based on contract in name only," Dobbs § 12.4, at 818.

contracts, which do not fit into the core of contract law." Hoffman, 81 Fordham L. Rev., at 1230. As to which "highly unusual contracts" trigger the exceptional allowance of such damages, the only area of agreement is that there is no agreement. There is thus no basis in contract law to maintain that emotional distress damages are "traditionally available in suits for breach of contract," and correspondingly no ground, under our cases, to conclude that federal funding recipients have "clear notice," that they would face such a remedy in private actions brought to enforce the statutes at issue.

* * *

For the foregoing reasons, we hold that emotional distress damages are not recoverable under the Spending Clause antidiscrimination statutes we consider here. The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KAVANAUGH, with whom JUSTICE GORSUCH joins, concurring.

. . . [T]he contract-law analogy is an imperfect way to determine the remedies for this implied cause of action.

Instead of continuing to rely on that imperfect analogy, I would reorient the inquiry to focus on a background interpretive principle rooted in the Constitution's separation of powers. Congress, not this Court, creates new causes of action. And with respect to existing implied causes of action, Congress, not this Court, should extend those implied causes of action and expand available remedies. In my view, that background interpretive principle—more than contract-law analysis—counsels against judicially authorizing compensatory damages for emotional distress in suits under the implied Title VI cause of action.

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

Using its Spending Clause authority, Congress has enacted four statutes that prohibit recipients of federal funds from discriminating on the basis of certain protected characteristics, including (depending upon the statute) race, color, national origin, sex, disability, or age. We have held that victims of intentional violations of these statutes may bring lawsuits seeking to recover, among other relief, compensatory damages. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 76, (1992). Today, the Court holds that the compensatory damages available under these statutes cannot include compensation for emotional suffering.

The Court has asked the right question: "[W]ould a prospective funding recipient, at the time it engaged in the process of deciding whether to accept federal dollars, have been aware that it would face such liability?" And it has correctly observed that our precedents instruct us to answer this question by drawing an analogy to contract law. But I disagree with how the Court has applied that analogy.

The Court looks broadly at all contracts. It says that, most of the time, damages for breach of contract did not include compensation for emotional distress. And it then holds that emotional distress damages are not available under the Spending Clause statutes at issue here. But, in my view, contracts analogous to these statutes did allow for recovery of emotional distress damages. Emotional distress damages were traditionally available when

"the contract or the breach" was "of such a kind that serious emotional disturbance was a particularly likely result." Restatement (Second) of Contracts §353, p. 149 (1979).

The Spending Clause statutes before us prohibit intentional invidious discrimination. That kind of discrimination is particularly likely to cause serious emotional disturbance. Thus, applying our precedents' contract analogy, I would hold that victims of intentional violations of these antidiscrimination statutes can recover compensatory damages for emotional suffering. I respectfully dissent.

I

. . . .

[T]he basic question here is whether damages for emotional suffering were "traditionally available" as remedies "in suits for breach of contract." Ibid.

II

Unlike the Court, though, I believe the answer to that basic question is yes. Damages for emotional suffering have long been available as remedies for suits in breach of contract—at least where the breach was particularly likely to cause suffering of that kind.

A general, overarching principle of contract remedies is set forth in the Restatement (Second) of Contracts: "Contract damages are ordinarily based on the injured party's expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as good a position as he would have been in had the contract been performed." § 347, Comment a, at 112; *see also* 3 E. Farnsworth, Contracts § 12.8, p. 188 (2d ed. 1998) (Farnsworth) ("The basic principle for the measurement of those damages is that of compensation based on the injured party's expectation"); 3 S. Williston, Law of Contracts § 1338, p. 2392 (1920) (Williston) ("[T]he general purpose of the law is, and should be, to give compensation:—that is, to put the plaintiff in as good a position as he would have been in had the defendant kept his contract").

This simple principle helps explain why compensatory damages are generally available as remedies and punitive damages are not. By definition, compensatory damages serve contract law's "general purpose," namely, to "give compensation." But punitive damages go beyond "compensat[ing] the injured party for lost expectation" and instead "put [him] in a better position than had the contract been performed." 3 Farnsworth § 12.8, at 193.

The same general principle also helps to explain the many cases in which damages for emotional suffering are not available. Most contracts are commercial contracts entered for pecuniary gain. Pecuniary remedies are therefore typically sufficient to compensate the injured party for their expected losses. . . .

[T]he same general rule also helps to explain the cases in which contract law did make available damages for emotional suffering. Contract law treatises make clear that expected losses from the breach of a contract entered for nonpecuniary purposes might reasonably include nonpecuniary harms. So contract law traditionally does award damages for emotional distress "where other than pecuniary benefits [were] contracted for" or where the breach "was particularly likely to result in serious emotional disturbance." 3 Williston § 1340, at 2396; 3 Farnsworth § 12.17, at 895; *see also, e.g.,* Restatement (Second) of

Contracts § 353, at 149 ("Recovery for emotional disturbance" was allowed where "the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result"); 1 Sutherland 157-158 (damages should be "appropriate to the objects of the contract"); 1 T. Sedgwick, Measure of Damages §45, p. 61 (8th ed. 1891) (Sedgwick) ("'Where other than pecuniary benefits are contracted for, other than pecuniary standards will be applied to the ascertainment of damages flowing from the breach'").

Examples of contracts that gave rise to emotional distress damages under this rule have included, among others, contracts for marriage, *see, e.g*., 1 Sutherland 156, and n. 4; contracts by common carriers, innkeepers, or places of public resort or entertainment, *see, e.g.*, McCormick § 145, at 593, and nn. 48-50; contracts related to the handling of a body, *see, e.g.*, 1 Sedgwick § 45, at 62, and n. a; contracts for delivery of a sensitive telegram message, *see, e.g*., id., at 62, and n. b; and more. In these cases, emotional distress damages are compensatory because they "'make good the wrong done.'" *Franklin*, 503 U.S. at 66; *see also Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 307, 1 (1986).

III

Does breach of a promise not to discriminate fall into this category? I should think so. The statutes before us seek to eradicate invidious discrimination. That purpose is clearly nonpecuniary. And discrimination based on race, color, national origin, sex, age, or disability is particularly likely to cause serious emotional harm. Often, emotional injury is the primary (sometimes the only) harm caused by discrimination, with pecuniary injury at most secondary. Consider, for example, the plaintiff in *Franklin*—a high school student who was repeatedly sexually assaulted by her teacher. Or the plaintiff in *Tennessee v. Lane*, 541 U.S. 509 (2004), who used a wheelchair and, because a building lacked wheelchair accessibility, was forced to crawl up two flights of stairs. Or the many historical examples of racial segregation in which Black patrons were made to use separate facilities or services. Regardless of whether financial injuries were present in these cases, the major (and foreseeable) harm was the emotional distress caused by the indignity and humiliation of discrimination itself.

As a Member of this Court noted in respect to the Civil Rights Act of 1964, Congress' antidiscrimination laws seek "the vindication of human dignity and not mere economics." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 291 (1964) (Goldberg, J., concurring). . . .

It is difficult to believe that prospective funding recipients would be unaware that intentional discrimination based on race, sex, age, or disability is particularly likely to cause emotional suffering. Nor do I believe they would be unaware that, were an analogous contractual breach at issue, they could be held legally liable for causing suffering of that kind. The contract rule allowing emotional distress damages under such circumstances is neither obscure nor unsettled, as the Court claims. To the contrary, it is clearly laid out in the Restatement (Second) of Contracts: "Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." §353, at 149. And the Restatement's rule is well supported by treatise writers, who have described the law similarly. I would therefore conclude that contract law is sufficiently clear to put

prospective funding recipients on notice that intentional discrimination can expose them to potential liability for emotional suffering.

IV

. . . .

The Court today reads *Barnes* to imply that prospective funding recipients can only be expected to be aware of "basic, general rules," not exceptions or subsidiary rules that govern specific circumstances. How does the Court derive that restrictive approach from *Barnes*, which did not purport to announce such a limitation? Because, the Court says, punitive damages were sometimes available in suits for breach of contract where the breach was "'also a tort for which punitive damages are recoverable.'" The Court assumes that *Barnes* must have refused to consider any exceptions at all because otherwise it would have relied on this exception to hold that punitive damages were available. The Court believes that damages for emotional suffering are similar: It says they, too, are available only under an exception to the general rule, and that exception is too "'fine-grained'" to put federal funding recipients on notice of their potential exposure to liability.

The Court's comparison to punitive damages is, in my view, unpersuasive. Punitive damages are not embraced by *Barnes*' contract-law analogy because they do not serve contract law's central purpose of "compensat[ing] the injured party"; instead, they "punish the party in breach." *see also Barnes*, 536 U.S. at 189, (distinguishing punitive damages, which are unavailable, from compensatory damages, which are available, because the former do not "'make good the wrong done'"). Accordingly, the punitive damages exception cited by the Court does not rely on contract-law principles at all, but rather, on tort law. The Restatement clarifies that, when contract and tort claims may overlap, contract law "does not preclude an award of punitive damages . . . if such an award would be proper under the law of torts." This special feature makes the punitive damages exception an inapt comparator for *Barnes*' contract-law analogy.

The same is not true of emotional distress damages. The Restatement does not attribute the availability of emotional distress damages to tort rather than contract law. See Restatement (Second) of Contracts § 353, at 149; *see also* McCormick § 145, at 593-594 ("Sometimes reliance is placed upon accompanying tortious conduct such as assault or defamation . . . but not always, nor do these elements seem essential." That makes sense because, unlike punitive damages, emotional distress damages can, and do, serve contract law's central purpose of compensating the injured party for their expected losses, at least where the contract secured primarily nonpecuniary benefits and contemplated primarily nonpecuniary injuries. As I said above, in such cases, emotional distress damages are a form of compensatory damages that "'make good the wrong done.'" . . . Indeed, reliance on an analogy only works when we compare things that are actually analogous. Here, the rules that govern analogous breaches of contract tell us that emotional distress damages can be available for violations of statutes that prohibit intentional discrimination.

V

Finally, we might recall why we look to contract rules at all. The contract-law analogy is a tool for answering the ultimate question whether federal funding recipients can appropriately be held liable for emotional suffering. In answering that question, we must

remain mindful of the need to ensure a "sensible remedial scheme that best comports with the statute." *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 284 (1998). The Court's holding today will not help to achieve that result.

Instead, the Court's decision creates an anomaly. Other antidiscrimination statutes, for which Congress has provided an express cause of action, permit recovery of compensatory damages for emotional distress. See 42 U.S.C. § 1981a(b)(3) (expressly providing for compensatory damages, including damages for "emotional pain, suffering," and "mental anguish" under Title VII of the Civil Rights Act); *Memphis Community School Dist.*, 477 U.S. at 307 (allowing recovery under 42 U.S.C. § 1983, of compensatory damages for "'personal humiliation, and mental anguish and suffering'"). Employees who suffer discrimination at the hands of their employers can recover damages for emotional suffering, as can individuals who suffer discrimination at the hands of state officials. But, until Congress acts to fix this inequity, the Court's decision today means that those same remedies will be denied to students who suffer discrimination at the hands of their teachers, patients who suffer discrimination at the hands of their doctors, and others.

It is difficult to square the Court's holding with the basic purposes that antidiscrimination laws seek to serve. One such purpose, as I have said, is to vindicate "human dignity and not mere economics." *Heart of Atlanta*, 379 U.S. at 291 (Goldberg, J., concurring). But the Court's decision today allows victims of discrimination to recover damages only if they can prove that they have suffered economic harm, even though the primary harm inflicted by discrimination is rarely economic. Indeed, victims of intentional discrimination may sometimes suffer profound emotional injury without any attendant pecuniary harms. *See, e.g., Franklin*, 503 U.S. at 63-64, 76,. The Court's decision today will leave those victims with no remedy at all.

* * *

For all of these reasons, I respectfully dissent.

NOTES AND QUESTIONS

1. Which opinion do you find most persuasive? Why?

2. What impact does this case have on claims for sex discrimination under title IX of the Education Amendments? Race discrimination cases under title VI of the Civil Rights Act?

3. Can you think of any strategies that a lawyer for a plaintiff who suffered emotional distress as a result of disability discrimination might use, now that a claim under section 504 (and potentially ADA title II, which incorporates section 504 remedies, 42 U.S.C. § 12133), does not support a damages award for that injury? Are the new limits on relief likely to affect lawyers' decisions about which cases to take? If so, how?

4. If Congress were inclined to overrule this decision, what should the statutory enactment look like?

5. What damages or other relief might still be available for disability discrimination plaintiffs despite *Cummings*, and in which kinds of section 504 and ADA title II cases?

6. In *Lartigue v. Northside Independent School District*, 100 F.4th 510 (5th Cir. 2024), the court vacated a grant of summary judgment to the defendant and allowed a case to proceed in which the student, who had a hearing impairment, claimed that the school district violated the ADA and other provisions by failing to:

> (1) provide her with Communication Access Realtime Translation ("CART") services for her use during class, and during her training and participation in debate tournaments; (2) furnish copies of notes for all of her academic classes; (3) supply two interpreters for all classes and extracurricular activities in line with professional standards of care; (4) arrange Consultative AI Teacher Services; (5) provide closed-captioning services for in-class films and videos; (6) furnish AI Counseling Services in a consistent and private fashion; (7) supply group counseling, a service all other students at a regional school for the deaf were given; (8) designate a private "quiet space" to cut out multiple voices and stimuli; (9) provide an interpreter on the bus to assist her during normal school days; and (10) implement a "flashing lights" system during the school's emergency drills, leaving her unaware of a called emergency.

Id. at 516. The student alleged that the district's conduct caused her panic attacks, the inability to participate in some debate competitions, and a deterioration in her physical and emotional state, ultimately leading her to leave public school and be home-schooled. The court found that the damages claims did not need to be exhausted in light of *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023), discussed *infra* this chapter. The court said that that the ADA claim was not precluded by the hearing officer decision against the student on the IDEA claim, and collateral estoppel did not apply, reasoning that the legal standards applicable to IDEA claims differ significantly from those of ADA failure-to-accommodate claims. "First, the ADA and its accompanying regulations require entities to 'give primary consideration to the requests of individuals with disabilities,' an element absent in the IDEA. Second, the ADA requires public entities to provide equal opportunities to disabled and non-disabled individuals; the IDEA does not." *Id*. at 520 (footnotes omitted).

7. Taking an approach similar to that of the court in *Lartigue*, the court in *LePape v. Lower Merion School District*, 103 F.4th 966 (3d Cir. 2024), reversed a grant of summary judgment to the defendant in a case alleging discrimination under the ADA even though the district court affirmed the administrative decision that the defendant did not deny the student FAPE under IDEA and the plaintiffs abandoned the IDEA claim on appeal. The plaintiffs alleged the school district violated the ADA by refusing to allow the student, who had autism and an intellectual disability and was a non-speaker, to use a communication system called "Spelling to Communicate," which entails the student pointing at letters on an alphabet board held by a trained support person. The court said that under the ADA the public entity had to afford primary consideration to the requests of the individual with

disabilities regarding auxiliary aids and services such as methods of communication, and had to follow those requests unless it could show that another effective means of communication existed, citing 28 C.F.R. § 35.160(b)(2) and 28 C.F.R. Part 35, App. A. The court refused to give preclusive effect to the due process decision, noting that preclusion should not be imposed when the administrative process is prerequisite to suit, and it rejected the application of modified de novo review of the hearing officer's decision regarding the non-IDEA claims, reasoning that doing so would violate the Seventh Amendment right to a jury trial on those claims.

PAGE 591, replace note 1:

1. *Mark H*. discusses the requirement of a showing of intent, which can be met with proof of deliberate indifference, for a damages claim under section 504 and its regulations. Some courts have required section 504 and ADA title II claimants bringing cases concerning elementary and secondary education to meet a higher standard: to prove gross misjudgment or bad faith on the part of the defendant to sustain their claims. In *A.J.T. v. Osseo Area Schools, Independent School District. No. 279*, 145 S. Ct. 1647 (2025) (Roberts, C.J.), the Supreme Court rejected the bad-faith or gross-misjudgment standard for section 504 and ADA liability in school cases. The *A.J.T.* plaintiffs sought a permanent injunction, reimbursement of expenses, and compensatory damages for the denial of an instructional day covering the afternoon and early evening for a student whose epileptic condition was so severe in the morning hours that she could not attend classes until noon. The school district rejected requests for the afternoon and evening instruction, offering the student just 4.25 hours of class daily, rather than the 6.5 hours offered nondisabled students, and it later reduced the student's daily school time to about three hours. The parents prevailed on an IDEA claim, *Osseo Area Schs., Indep. Sch. Dist. No. 279 v. A.J.T.*, 96 F.4th 1062 (8th Cir. 2024), but in the section 504 and ADA suit the Eighth Circuit Court of Appeals affirmed summary judgment against the parents, reasoning that when the ADA or section 504 violation is based on educational services for children with disabilities, the plaintiff must prove that school officials acted with either bad faith or gross misjudgment, such that the "statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent." *A.J.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 96 F.4th 1058, 1061 (8th Cir. 2024) (internal quotations omitted). A footnote, however, questioned why there should be "such a high bar for claims based on educational services when we require much less in other disability-discrimination contexts." *Id*. n.2. The Supreme Court unanimously vacated and remanded the decision, stressing that in cases not involving elementary and secondary education, the Eighth Circuit and the courts of appeals generally have permitted plaintiffs "to establish a statutory violation and obtain injunctive relief under the ADA and Rehabilitation Act without proving intent to discriminate." 145 S. Ct. at 1655. The Court noted that for compensatory damages, the courts generally have required a showing intentional discrimination, satisfied by proof of deliberate indifference, requiring only that the claimant prove the defendant disregarded a strong likelihood that its conduct would result in a violation of the statute rather than ill will or animosity. "We hold today that ADA and Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts. Nothing in the text of

Title II of the ADA or Section 504 of the Rehabilitation Act suggests that such claims should be subject to a distinct, more demanding analysis." *Id*. In addition, the relevant remedial provisions do not make such a distinction. The Eighth Circuit's caselaw was based on a desire to cabin the special education statute away from the more generally applicable anti-discrimination laws, but Congress rejected such attempts when it overruled the Supreme Court decision *Smith v. Robinson*, 468 U.S. 992 (1984), and enacted what is now 20 U.S.C. § 1415(*l*). Section 1415(*l*) states that nothing in IDEA is to be construed "to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act [including § 504], or other Federal laws protecting the rights of children with disabilities," with the caveat that some claims of that type may need to be exhausted before suit. The bad faith or gross misjudgment standard for claims based on educational services, as opposed to other discrimination claims, limits the ability to vindicate ADA and Section 504 rights and "is irreconcilable with the unambiguous directive of § 1415(*l*)." *A.J.T.*,145 S. Ct. at 1657. The Court also rejected a school district argument that the bad faith or gross misjudgment standard should be applied to all disability discrimination cases, rather than only those having to do with elementary and secondary education. That argument was not presented below. The Court said, "That our decision is narrow does not diminish its import for A.J.T. and 'a great many children with disabilities and their parents.' *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 146 (2023). Together they face daunting challenges on a daily basis. We hold today that those challenges do not include having to satisfy a more stringent standard of proof than other plaintiffs to establish discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act." 145 S. Ct. at 1658-59. The Court added in a footnote that "Because we address only the application of the heightened bad faith or gross misjudgment standard of intent to education related ADA and Rehabilitation Act claims, our opinion should not be read to speak to any other showing that a plaintiff must make in order to prove a violation of the respective requirements of those statutes or the IDEA." *Id*. at 1657 n.6.

Justice Thomas, joined by Justice Kavanaugh, concurred, challenging the assumption that section 504 and the ADA require different showings regarding intent for compensatory damages and for injunctive relief. Justice Thomas raised constitutional concerns about section 504 and ADA claims based on anything less than intent. Justice Sotomayor, joined by Justice Jackson, also concurred, stating that the text of the ADA and section 504 did not support interpretations that would necessitate a showing of improper purpose or animus. People protected by the anti-discrimination laws can lose access to services and benefits by reason of disability without an invidious animus or purpose on the part of the defendant, as is the case with architectural barriers and failure to offer communication accommodations. "There can be no question, too, that the statutes impose an affirmative obligation on covered entities to provide reasonable accommodations, undercutting any improper-purpose requirement." *Id*. at 1662 (Sotomayor, J., concurring). That conclusion was buttressed by the statutes' use of the passive voice and by the history and purpose of the statutes, as described in cases such as *Alexander v. Choate*, 469 U.S. 287 (1985).

What should the standard be for damages claims? For other claims? Does it make sense to have a distinction? Note 3 *infra* provides further development of the ideas in the *A.J.T.* opinions. *See generally* Mark C. Weber, *Accidentally on Purpose: Intent in Disability*

Discrimination Law, 56 B.C. L. REV. 1417 (2015) (contending that intent should not be required for disability discrimination liability, irrespective of what relief is sought or would be appropriate).

PAGE 596, add to the end of note 3:

The Ninth Circuit affirmed that a disparate impact claim may be brought under ADA title II and section 504. *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729 (9th Cir. 2021) (recognizing private right of action to enforce disparate-impact discrimination ADA title II and section 504 regulations in case brought by plaintiffs who claimed systematic discrimination against blind students at community college, including accessibility barriers as to class materials, texts, technology, and library research).

PAGE 628, line 2, before "*But see, e.g., Weixel v. Board of Educ*." insert:

; *see also Hawai'i Disability Rts. Ctr. v. Kishimoto*, 122 F. 4th 353 (9th Cir. 2024) (in class action over denial of services to students with autism, excusing exhaustion of individual class members' IDEA claims but requiring exhaustion of IDEA claims brought by protection and advocacy agency).

PAGE 639, delete note 2.

PAGE 640, insert after note 4:

In note 4 of the opinion, the *Fry* Court "left for another day" the question whether exhaustion is "required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests . . . is not one the an IDEA hearing officer may award." The Court answered that question in the following case.

LUNA PEREZ v. STURGIS PUBLIC SCHOOLS
598 U.S. 142 (2023)

> *The Court held that a claim for damages based on a public school's failure to provide needed services to a student who was deaf did not need to be exhausted through the IDEA due process hearing procedure.*

JUSTICE GORSUCH delivered the opinion of the Court.

The Individuals with Disabilities Education Act (IDEA) seeks to ensure children with disabilities receive a free and appropriate public education. Toward that end, the law sets forth a number of administrative procedures for children, their parents, teachers, and school districts to follow when disputes arise. The question we face in this case concerns the extent to which children with disabilities must exhaust these administrative procedures under IDEA before seeking relief under other federal antidiscrimination statutes, such as the Americans with Disabilities Act of 1990 (ADA).

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From ages 9 through 20, Miguel Luna Perez attended schools in Michigan's Sturgis Public School District (Sturgis). Because Mr. Perez is deaf, Sturgis provided him with aides to translate classroom instruction into sign language. For years, Mr. Perez and his parents allege, Sturgis assigned aides who were either unqualified (including one who attempted to teach herself sign language) or absent from the classroom for hours on end. Along the way, Sturgis allegedly misrepresented Mr. Perez's educational progress too, awarding him inflated grades and advancing him from grade to grade regardless of his progress. Based on Sturgis's misrepresentations, Mr. Perez and his parents say, they believed he was on track to graduate from high school with his class. But then, months before graduation, Sturgis revealed that it would not award him a diploma.

In response to these developments, Mr. Perez and his family filed a complaint with the Michigan Department of Education. They alleged that Sturgis had failed its duties under IDEA and other laws. Shortly before an administrative hearing, the parties reached a settlement. Under its terms, Sturgis promised to provide Mr. Perez all the forward-looking equitable relief he sought, including additional schooling at the Michigan School for the Deaf.

After settling his administrative complaint, Mr. Perez filed a lawsuit in federal district court under the ADA seeking backward-looking relief in the form of compensatory damages. That complaint drew a motion to dismiss from Sturgis. The school district argued that a provision in IDEA, 20 U.S. C. § 1415(*l*), barred Mr. Perez from bringing an ADA claim without first exhausting all of IDEA's administrative dispute resolution procedures. Ultimately, the district court agreed with Sturgis and dismissed the suit. Bound by circuit precedent already addressing the question, the Sixth Circuit affirmed.

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Section 1415(*l*) contains two salient features. First, the statute sets forth this general rule: "Nothing in [IDEA] shall be construed to restrict" the ability of individuals to seek "remedies" under the ADA or "other Federal laws protecting the rights of children with disabilities." Second, the statute offers a qualification, prohibiting certain suits with this language: "[E]xcept that before the filing of a civil action under such [other federal] laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted." In turn, subsections (f) and (g) provide affected children and their parents with the right to a "due process hearing" before a local or state administrative official, § 1415(f)(1)(A), followed by an "appeal" to the state education agency, § 1415(g)(1).

The parties offer very different interpretations of § 1415(*l*). Mr. Perez reads the statute to require a plaintiff to exhaust the administrative processes found in subsections (f) and (g) only to the extent he pursues a suit under another federal law for remedies IDEA also provides. None of this, Mr. Perez contends, forecloses his current claim because his ADA complaint seeks only compensatory damages, a remedy everyone before us agrees IDEA

cannot supply. By contrast, Sturgis reads § 1415(*l*) as requiring a plaintiff to exhaust subsections (f) and (g) before he may pursue a suit under another federal law if that suit seeks relief for the same *underlying harm* IDEA exists to address. On this view, the law bars Mr. Perez's ADA suit because it seeks relief for harms flowing from Sturgis's alleged past shortcomings in providing a free and appropriate public education—a harm IDEA exists to address—and Mr. Perez chose to settle his administrative complaint rather than exhaust § 1415(f) and (g)'s remedial processes.

If both views are plausible ones, we believe Mr. Perez's better comports with the statute's terms. Start with § 1415(*l*)'s first clause. It focuses our attention on "remedies." A "remedy" denotes "the means of enforcing a right," and may come in the form of, say, money damages, an injunction, or a declaratory judgment. Black's Law Dictionary 1320 (8th ed. 2004); see also 13 Oxford English Dictionary 584-585 (2d ed. 1991) (defining "remedy" as "[l]egal redress"). The statute then proceeds to instruct that "[n]othing" in IDEA shall be construed as "restrict[ing] or limit[ing]" the availability of any of these things "under" other federal statutes like the ADA.

Of course, § 1415(*l*) carves out an exception to this rule. The second clause bars individuals from "seeking relief" under other federal laws unless they first exhaust "the procedures under subsections (f) and (g)." But, by its terms, this limiting language does not apply to all suits seeking relief that other federal laws provide. The statute's administrative exhaustion requirement applies *only* to suits that "see[k] relief . . . also available under" IDEA. And that condition simply is not met in situations like ours, where a plaintiff brings a suit under another federal law for compensatory damages—a form of relief everyone agrees IDEA does not provide.

Admittedly, our interpretation treats "remedies" (the key term in the first clause) as synonymous with the "relief" a plaintiff "seek[s]" (the critical phrase found in the second clause). But a number of contextual clues persuade us that is exactly how an ordinary reader would understand this particular provision. Not only does § 1415(*l*) begin by directing a reader to the subject of remedies, offering first a general and then a qualifying rule on the subject. In at least two other places, IDEA treats "remedies" and "relief" as synonyms, and we cannot conceive a persuasive reason why the statute would operate differently only here. Section 1415(i)(2)(C)(iii) directs courts in IDEA cases to "grant such relief as the court determines is appropriate." (Emphasis added.) That statutory instruction, we have said, authorizes courts to grant "as an available *remedy*" the "reimbursement" of past educational expenses. *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 369-370 (1985) (emphasis added). Elsewhere, IDEA sometimes bars those who reject a school district's settlement offer from recovering attorney's fees for later work if "the *relief* finally obtained . . . is not more favorable . . . than the offer." § 1415(i)(3)(D)(i)(III) (emphasis added). Once more, relief means remedy.

Nor is IDEA particularly unusual in treating remedies and relief as synonyms. Other provisions in the U.S. Code do too. By way of example, 18 U.S.C. § 3626(d) provides that "[t]he limitations on *remedies* in this section shall not apply to *relief* entered by a State court based solely upon claims arising under State law." (Emphases added.) Likewise, 28

U.S.C. § 3306(a)(2)-(3) indicate that "the United States . . . may obtain . . . a *remedy* under this chapter . . . or . . . any other *relief* the circumstances may require." (Emphases added.)

Influencing our thinking as well is the fact that the second clause in § 1415(*l*) refers to claims "*seeking* relief" available under IDEA. To "seek" is "[t]o ask for" or "request." 14 Oxford English Dictionary, at 877. And often enough the phrase "seeking relief" or some variant of it is used in the law to refer to the remedies a plaintiff requests. Under the Federal Rules of Civil Procedure, for example, a plaintiff's complaint must include a list of requested remedies, or what the law calls "a demand for the *relief sought*." Fed. Rule Civ. Proc. 8(a)(3) (emphasis added); see also Fed. Rule Civ. Proc. 54(c) (similar). Many of our opinions as well similarly speak of the "relief" a plaintiff "seeks" as the remedies he requests. . . .

Faced with all this, Sturgis replies that, whatever the merits of our interpretation, precedent forecloses it. Specifically, the school district points to *Fry v. Napoleon Community Schools* (2017). But the Court in *Fry* went out of its way to reserve rather than decide the question we now face. *See id.*, at 165, n. 4, *id*., at 168, n. 8. And what the Court did say in *Fry* about the question presented there hardly advances the school district's cause here. In *Fry*, the Court held that §1415(*l*)'s exhaustion requirement does not apply unless the plaintiff "seeks relief for the denial of" a free and appropriate public education "because that is the only 'relief'" IDEA's administrative processes can supply. *Id*., at 165, 168. This case presents an analogous but different question—whether a suit admittedly 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. In both cases, the question is whether a plaintiff must exhaust administrative processes under IDEA that cannot supply what he seeks. And here, as in *Fry*, we answer in the negative.

Failing all else, Sturgis closes with an appeal to congressional purpose. The school district worries that our understanding of § 1415(*l*) would frustrate Congress's wish to route claims about educational services to administrative agencies with "'special expertise'" in such matters. But "it is . . . our job to apply faithfully the law Congress has written," and "'[w]e cannot replace the actual text with speculation as to Congress' intent.'" *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (quoting *Magwood v. Patterson*, 561 U.S. 320, 334 (2010)). Even on its own terms, it is unclear what the school district's argument proves. Either interpretation of § 1415(*l*) operates to preclude some unexhausted claims. Under our view, for example, a plaintiff who files an ADA action seeking both damages and the sort of equitable relief IDEA provides may find his request for equitable relief barred or deferred if he has yet to exhaust § 1415(f) and (g). It is "quite mistaken to assume," too, that any interpretation of a law that does more to advance a statute's putative goal "must be the law." *Henson*, 582 U.S., at 89. Laws are the product of "compromise," and no law "'pursues its . . . purpose[s] at all costs.'" *Ibid.* And it isn't exactly difficult to imagine that a rational Congress might have sought to temper a demand for administrative exhaustion when a plaintiff seeks a remedy IDEA can supply with a rule excusing exhaustion when a plaintiff seeks a remedy IDEA cannot provide.

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The parties pose a number of additional questions they would like us to answer—including whether IDEA's exhaustion requirement is susceptible to a judge-made futility exception and whether the compensatory damages Mr. Perez seeks in his ADA suit are in fact available under that statute. But today, we have no occasion to address any of those things. In proceedings below, the courts held that § 1415(*l*) precluded Mr. Perez's ADA lawsuit. We clarify that nothing in that provision bars his way. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

NOTES AND QUESTIONS

1. The opinion is a good example of a textualist approach to statutory interpretation. Would an approach focused more on evidence of legislative intent rather than the text of the legislation have yielded a different result? If so, would that result be good or bad?

2. For an example of a post-*Luna Perez* damages case based on events that were the subject of a case previously dismissed for failure to exhaust, see *Heston v. Austin Independent School District*, 71 F.4th 355 (5th Cir. 2023) (vacating dismissal, ruling that case was not barred by issue preclusion). One court has synthesized *Fry* and *Luna Perez* as to exhaustion. In *Lartigue v. Northside Independent School District*, 100 F.4th 510 (5th Cir. 2024), the court declared:

> [T]he current state of the law is that in a suit against a public school for alleged violations of the ADA or similar anti-discrimination statutes, the court should first assess whether the gravamen of the complaint is the denial of a FAPE or disability discrimination. If the complaint is not the denial of a FAPE, the plaintiff need not clear the IDEA's administrative hurdles. On the other hand, if the complaint is predicated on a FAPE denial, the question turns to the relief sought. And if the relief sought is not one that the IDEA can provide, such as compensatory damages, the plaintiff need not exhaust the IDEA's administrative hurdles. But if the relief sought is offered by the IDEA, a plaintiff must fully exhaust the administrative processes as required by § 1415(*l*).

Id. at 515 (footnotes omitted). The case is discussed in more detail in Subsection B of this chapter.

3. To what degree is the application of *Luna Perez* affected by the limits on damages in section 504 and ADA title II cases imposed by *Cummings v. Premier Rehab Keller*, *supra* this chapter?

4. In light of *Cummings*, what damages relief do you think Mr. Luna Perez might be entitled to receive?

CHAPTER 11
ATTORNEYS' FEES IN SPECIAL EDUCATION LITIGATION

PAGE 680, add to the end of the last full paragraph, after "20 U.S.C. § 1415(i)(3)(F)–(G)":

See generally Augustyn v. Wall Twp. Bd. of Educ., 139 F.4th 252 (3d Cir. 2025) (vacating 90 percent reduction from lodestar, reasoning that lack of success in hearing decision, procedural nature of victory, limited resources of defendant, and other considerations did not justify reduction).

CHAPTER 12
CHILDREN IN PRIVATE SCHOOLS

PAGE 713, add to the end of note 4:

See generally Loffman v. California Dep't of Educ., 119 F.4th 1147 (9th Cir. 2024) (relying on *Trinity Lutheran* and *Espinoza* to overturn dismissal and to hold that high school student's parents plausibly pled that California requirement that private schools it contracts with to provide education under IDEA had to be non-sectarian violated rights of the plaintiffs under Free Exercise Clause of the First Amendment).

CHAPTER 14
POST-SECONDARY EDUCATION

PAGE 756, add to the end of note 1:

On appeal in *Payan*, the Ninth Circuit vacated a judgment on a jury verdict against the plaintiffs. *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729 (9th Cir. 2021) (recognizing private right of action to enforce disparate-impact discrimination ADA title II and section 504 regulations in case brought by plaintiffs who claimed systematic discrimination against blind students at community college, including accessibility barriers as to class materials, texts, technology, and library research).