No. 17-325

IN THE

Supreme Court of the United States

ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT,

Petitioner,

v.

M.C., BY AND THROUGH HIS GUARDIAN AD LITEM, M.N.; AND M.N,

Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

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November 2017

QUESTIONS PRESENTED

The Individuals with Disabilities Education Act (IDEA) requires a school district to provide a disabled child with special education and related services designed to meet the child's unique needs through an individualized education program (IEP) developed with the input of the child's parents. Petitioner school district committed procedural violations in developing an IEP for respondents and by failing to respond to their administrative complaint. The court below found that the procedural violations caused substantive harm and remanded the case for further proceedings, including a determination of whether the school district had complied substantively with the IDEA under the standard announced in *Endrew F. ex rel. Joseph F. v. Douglas County School District*, 137 S. Ct. 988 (2017). The questions presented are:

1) Whether a school district that fails to respond to an administrative complaint must be ordered to do so before the hearing is held and bear the cost of the delay.
2) Whether procedural violations of the IDEA that deprive a parent of her right to participate in the IEP process deny a disabled student a free appropriate public education.
3) Whether the court below properly paraphrased the standard articulated in *Endrew F.* prior to remanding the case for application of the *Endrew F.* standard.

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INTRODUCTION

Petitioner Antelope Valley Union High School District (the District) seeks this Court's review of a fact-bound decision that correctly applied well-established IDEA principles to analyze a series of undisputed procedural violations of the IDEA committed by the District. The court of appeals found that the District's procedural violations caused significant prejudice, and it remanded the case to the district court for further determinations regarding the extent of the harm and to apply the standard articulated by this Court earlier this year in *Endrew F. ex rel. Joseph F. v. Douglas County School District*, 137 S. Ct. 988 (2017), to determine the substantive reasonableness of the services offered by the District. The decision below faithfully applied the statute, does not conflict with the decision of any other court, and key factual issues remain for determination on remand. The petition should be denied.

STATEMENT

Statutory Background. The IDEA provides federal grants to States to fund special education and related services to children with disabilities, 20 U.S.C. § 1411(a)(1), and it conditions those grants on compliance with certain standards and procedures. Specifically, the Act requires recipients of federal funding to make a "free appropriate public education" (FAPE) available to children with disabilities. *Id.* § 1412(a)(1)(A). A FAPE must include special education and related services designed to meet each child's unique needs. *Id.* § 1400(d)(1)(A).

The "centerpiece" of the IDEA's scheme for providing a FAPE to children with disabilities is the

"individualized education program" (IEP). *Honig v. Doe,* 484 U.S. 305, 311 (1988); *see* 20 U.S.C. § 1401(9)(D). An IEP must comply with specific statutory requirements and establish a special education program tailored to each child's "unique needs." 20 U.S.C. § 1401(29); *see id.* §§ 1401(9)(D), 1414(d)(1)(A). "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999.

The IDEA requires school districts to work collaboratively with parents to formulate the IEP. Parents dissatisfied with the IEP can seek administrative and judicial review of the school district's IDEA-related determinations, *see* 20 U.S.C. §§ 1415(f)–(j), and the reviewing court "shall grant such relief as the court determines is appropriate," *id.* § 1415(i)(2)(C)(iii). Where a parent files a due process complaint, and the school district has not sent a prior written notice to the parent regarding the school district's position on the issues in dispute, the IDEA requires the school district to do so within ten days. *Id.* § 1415(c)(2)(B)(i)(I). Compensatory relief is available for procedural violations of the IDEA that impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process, or cause a deprivation of educational benefits. *Id.* § 1415(f)(3)(E)(ii). The IDEA has "elaborate and highly specific procedural safeguards" but "general and somewhat imprecise" substantive standards. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 205 (1982). "Congress placed every bit as much emphasis upon compliance with procedures giving par-

ents and guardians a large measure of participation at every stage of the administrative process, as it did upon the measurement of the resulting IEP against a substantive standard," because "adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Id.* at 205–06 (internal citation omitted).

Facts and Proceedings Below. Respondent M.C. is a child with multiple disabilities, including blindness, who matriculated into the District for the 2012–2013 school year. Respondent M.N. is M.C.'s mother. Pet. App. 31. On August 2, 2012, before the school year began, the District convened a meeting to discuss M.C.'s educational challenges and draft an IEP. At the conclusion of the meeting, M.N. signed the IEP authorizing implementation of services, but she did not agree that the IEP offered her child a FAPE. *Id.* On August 14, 2012, M.N. filed a due process complaint alleging that the District committed procedural and substantive violations of the IDEA. *Id.* 32. Although the IDEA requires a school district to respond to a due process complaint within ten days if it has not already provided written notice of its position on the issues in dispute, 20 U.S.C. § 1415(c)(2)(B)(i)(I), the District never responded to the complaint. Pet. App. 18.

The District asserts that after M.N. filed the due process complaint, but before the administrative hearing, it discovered a series of errors in the August 2 IEP, which it sought to remedy by unilaterally amending the IEP without notice to M.N. For example, the August 2 IEP stated incorrectly that M.C. did not require assistive technology (AT) devices or services. *Id.* 17. The District contends that it sought

to correct its error by amending the IEP on August 24, 2012, to show that M.C. did require AT devices. The IEP as amended remained deficient, however, because it failed to specify the types of AT devices and services to be provided to M.C. *Id.*

Further, in the August 2 IEP, the District offered M.C. the services of a teacher of the visually impaired (TVI) for 240 minutes per month. According to the District, the IEP should have offered TVI services for 240 minutes per week. On September 12, 2012, the District amended the IEP a second time to change the amount of TVI services offered, but it failed to send M.N. a copy of the revised IEP or otherwise notify her of the changes until the first day of the due process hearing. Moreover, the IEP as amended remained inaccurate. The District's own witnesses testified at the hearing that the District intended to offer M.C. 300 minutes of TVI services per week. *Id.* 11.

Despite the District's failure to respond to the due process complaint or otherwise provide written notice of its position on the issues in dispute, an Administrative Law Judge (ALJ) held a due process hearing on October 9, 24, and 25, 2012. *Id.* 32. On November 27, 2012, the ALJ issued a decision denying M.C.'s claims. *Id.* 33. The district court affirmed, and M.N. appealed to the Ninth Circuit. *Id.* 6.

The court of appeals addressed three issues at the intersection of the IDEA's procedural and substantive safeguards. First, the court addressed whether the District's failure to accurately document the offer of TVI services denied M.C. a FAPE by precluding M.N. from meaningfully participating in the IEP process. Second, the court addressed whether the Dis-

trict's failure to identify the AT devices M.C. needed infringed M.N.'s opportunity to participate in the IEP process and denied M.C. a FAPE. Third, the court addressed whether the District's failure to respond to M.N.'s due process complaint violated the IDEA and due process. *Id.* 9.

On the first two issues, the court of appeals held that "[t]he District's failure to adequately document the TVI services and AT devices offered to M.C. violated the IDEA and denied M.C. a FAPE." *Id.* 22. The court reasoned that the procedural violations "deprived M.N. of her right to participate in the IEP process and made it impossible for her to enforce the IEP and evaluate whether the services M.C. received were adequate." *Id.* The court of appeals noted that the District had offered no justification for its failure to bring its unilateral amendments of the IEP to M.N.'s attention. *Id.* 14–15. Thus, it instructed the district court to determine, on remand, whether the District's conduct "was a deliberate attempt to mislead M.N. or mere bungling on the part of the District and its lawyers," and, if the former, to "impose a sanction sufficiently severe to deter any future misconduct." *Id.* 15 n.5.

On the third issue, the court held that the ALJ should not have gone forward with the administrative hearing until the District filed a response to the complaint, so that M.N. had notice of the issues in dispute and the District's position. *Id.* 19. The court directed that, on remand, the district court should determine "the prejudice M.N. suffered as a result of the District's failure to respond" and, if the District's failure to respond caused M.N. to incur unnecessary costs, to award appropriate compensation. *Id.* 19–20.

Having found for M.N. on all three procedural issues, the court of appeals did not reach the merits of the substantive claims. Instead, it remanded the case to the district court to evaluate whether the District had complied substantively with the IDEA in light of the standard recently articulated by this Court in *Endrew F.* Pet. App. 22.

The District sought rehearing and rehearing en banc. The petition was denied. *Id.* 1.

REASONS FOR DENYING THE WRIT

I. This case has been remanded for further proceedings, and there is no compelling reason to review the lower court's determination that, under the facts of this case, the District's failure to respond to the administrative complaint violated the IDEA.

The District seeks certiorari on the first question presented based on three assertions. First, the District notes that the IDEA requires a response to a due process complaint only where the parent has not received prior written notice of the school district's position on the issues presented in the complaint, and it argues that the court below erred by not discussing specifically the prior-written-notice clause of the statute. Second, the District argues that the relief ordered by the court below—shifting to the District any costs incurred by M.N. as a result of the District's violation of the IDEA's response requirement—violates the Spending Clause because the District was not on notice of its obligations under the IDEA or that a court can fashion appropriate relief for such a violation. Third, the District claims that the decision below conflicts with three federal district court decisions. All three assertions rest on misun-

derstandings of the statute, case law, and the decision below. None provide a sound basis for this Court's review.

A. The factual determination that the District's failure to file a response to the administrative complaint deprived M.N. of notice as to the District's position regarding issues in dispute does not warrant review.

In its petition, the District explains that the IDEA, 20 U.S.C. § 1415(c)(2)(B)(i)(I), requires a school district to respond to a parent's due process complaint within ten days if the school district has not already provided the parent with "prior written notice" of the school district's position on the issues in dispute. The District suggests that the court below erred by reading the prior-written-notice clause out of the statute, and replacing it with an "unqualified requirement" that a school district "must always file a comprehensive response to any due process request." Pet. 23. The court below did no such thing.

The court of appeals found that the District violated the IDEA's response requirement because the District never responded to M.N.'s due process complaint *and*, prior to the hearing, had not otherwise apprised M.N. of the District's position with regard to two of the key issues in dispute: the amount of TVI offered M.C., and the AT services M.C. required. The District rests its claim of error on the lack of a specific discussion of the prior-written-notice clause, but the District does not allege that it ever provided such notice. The District concedes that the IEP it developed on August 2, 2012, neither accurately stated the amount of TVI offered nor set forth the specific AT services required. M.N. first learned of the changes

in the District's position on each of those issues during the due process hearing.

Thus, there is no reason to believe that the court below was unaware of, or did not consider, the prior-written-notice clause of the IDEA's response requirement. Indeed, the court below specifically cited the prior-written-notice section of the IDEA in analyzing the District's failure to respond to the complaint. Pet. App. 18 (citing 20 U.S.C. § 1415(c)(2)(B)(i)(I)). The court had no reason to further address that clause because, as a matter of fact, it has no application to this case. Because an explicit discussion of the prior-written-notice clause of the IDEA's response requirement would not have changed the outcome below, the omission cannot reasonably be deemed error and provides no reason for this Court to grant review.

B. The Ninth Circuit's fashioning of appropriate relief for a violation of the IDEA does not violate the Spending Clause.

The District contends that the equitable relief fashioned by the Ninth Circuit to address the District's failure to respond to M.N.'s due process complaint violates the Spending Clause. Again, the District is wrong.

The Spending Clause requires clear notice of the obligations attached to a recipient's acceptance of funds under the IDEA. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). In *Arlington*, the issue was whether the IDEA's provision allowing a court to "award reasonable attorneys' fees as part of the costs" to a prevailing parent in an IDEA case, 20 U.S.C. § 1415(i)(3)(B)(i), would put a recipient on notice that acceptance of IDEA funds

would make it responsible for reimbursing prevailing parents for expert fees. The Court found that the IDEA did not provide clear notice of such an obligation because the statutory provision at issue "does not even hint" at liability for expert fees. *Arlington*, 548 U.S. at 296.

Here, it is undisputed that the District violated the response requirement of the IDEA, 20 U.S.C. § 1415(c)(2)(B)(i)(I), by failing to provide M.N. with either prior written notice of the District's position on the issues in dispute or a response to M.N.'s due process complaint. The District's obligation to apprise a parent of its positions prior to the hearing is clear from the plain language of the statute, and the District does not contend that it was unaware that its failure to do so would violate the IDEA.

To the extent the District suggests that it was unaware that a court could fashion an appropriate remedy for a violation of the response requirement, the District's Spending Clause theory fairs no better. The Spending Clause cannot shield the District from the consequences of its statutory violation because the IDEA makes clear that a reviewing court "shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). Indeed, the District's suggestion that the Spending Clause requires that the IDEA set forth a precise description of all possible remedies is in conflict with this Court's decisions holding that courts enjoy "broad discretion" to grant "appropriate" relief pursuant to the IDEA, *School Committee of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359, 374 (1985), and that the precise nature of the relief need not be spelled out in the statute, *see Forest Grove School District v. T.A.*, 557 U.S. 230, 237–38 (2009)

(affirming the reimbursement of private school costs to parents even though the IDEA "made no express reference to the possibility of reimbursement"). The decision below is a straightforward application of these precedents to the facts of this case.

Moreover, the decision does not warrant this Court's review because there is no split in authority regarding a court's discretion to fashion appropriate relief for violations of the IDEA. In addition, the particular contours of relief in this case have yet be determined because the court remanded the case "for a determination of the prejudice M.N. suffered as a result of the District's failure to respond" to the complaint, and a determination of the associated costs incurred by M.N. Pet. App. 19–20. Thus, review at this time would be premature.

C. The Ninth Circuit's decision regarding the IDEA's response requirement does not conflict with the decision of any other court.

The District claims that the Ninth Circuit's decision regarding the IDEA response requirement contradicts those of "all other courts" to have addressed the issue and "creates a split of judicial authority," but the District cites only three cases, all from federal district courts, one of which is unpublished. Pet. 25–26 (citing *Jalloh ex rel. R.H. v. District of Columbia*, 535 F. Supp. 2d 13 (D.D.C. 2008); *Sykes v. District of Columbia*, 518 F. Supp. 2d 261 (D.D.C. 2007); and *R.B. ex rel. A.B. v. Dep't of Educ. of City of New York*, No. 10 CIV. 6684 RJS, 2011 WL 4375694 (S.D.N.Y. Sept. 16, 2011). These district court decisions do not evince a conflict among the courts of appeals, and the District does not even argue that the decision below conflicts with the decision of any ap-

pellate court. For this reason as well, this case does not warrant review.

In any event the three decisions cited by the District are easily distinguished from the decision below. In *Jalloh*, the plaintiff argued that the ALJ should have awarded her a default judgment because the school district's response to her due process complaint did not include all of the information required under 20 U.S.C. § 1415(c)(2)(B)(i)(I). 535 F. Supp. 2d at 19. The district court agreed that the school district's response was inadequate and that "it is no small matter when a response fails to convey its obligatory information." *Id.* at 20. The court nonetheless affirmed the ALJ's decision because the plaintiff failed to show that the school district's inadequate response "prejudiced her in any way." *Id.* The court found that the plaintiff's lack of success at the administrative hearing was "caused by the failure of [plaintiff's] counsel to follow the correct procedures to obtain records and compel testimony … and not caused by [the school district's] meager Response." *Id.* In contrast, the court below found that the District's failure to submit any response at all put M.N. "at a serious disadvantage in preparing for the hearing," Pet. App. 19, and it remanded the case "for a determination of the prejudice M.N. suffered as a result of the District's failure to respond," *id.* 19–20.

In *Sykes*, the school district filed a response to plaintiff's due process complaint that did not satisfy all the IDEA's response requirements. The ALJ and the district court, however, found that the default judgment sought by plaintiff was not the appropriate remedy because "[a] default judgment would have subverted the administrative process and assigned [the student] a placement without a full examination

of the record or his needs." 518 F. Supp. 2d at 267. Here, the court below did not order entry of a default judgment. Rather, the court remanded the case for further proceedings and noted that the ALJ should have ordered the District to respond to the complaint before holding the hearing. Pet. App. 19.

The unreported district court decision in *R.B.* is also inapposite. The issue in *R.B.* was whether the school district's failure to file a response to the due process complaint constituted a waiver of the school district's statute of limitations defense. 2011 WL 4375694 at *4–5. The district court found that it did not, because the record showed that "Plaintiff was plainly on notice of the arguments that [the school district] intended to advance." *Id.* at *5. Here, M.N. was prejudiced by the lack of notice as to the District's position on various issues. Thus, the court below remanded the case for a determination of the extent of the prejudice suffered.

II. The lower court's conclusion that the District's procedural violations caused substantive harm does not warrant review.

The IDEA provides relief for procedural violations "if the procedural inadequacies (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits." 20 U.S.C. § 1415(f)(3)(E)(ii). Despite this well-established principle, the District argues that this Court should grant certiorari because, according to the District, the court below erred by failing to determine whether the District's procedural

violations affected the substantive rights set forth in § 1415(f)(3)(E)(ii). The District claims that, "[i]n stark contrast to the uniform case-law of its sister circuits and the Ninth Circuit's own precedent to the contrary, the [decision below] creates at least one exception to the clear and unambiguous requirement of 20 U.S.C. § 1415(f)(3)(E)(ii) and announces a blanket and inflexible rule that *any* failure to provide a parent with an IEP document is a procedural violation for which the parent is entitled to relief." Pet. 20.

This Court should deny review of the second issue presented in the petition for two reasons. First, the District has misread the decision below, which rests on the particular facts of this case and a determination that the District's procedural errors caused substantive harm. Second, the decision below does not conflict with the IDEA or the decision of any other court of appeals.

A. The court below found that the District's procedural violations affected the substantive rights set forth in § 1415(f)(3)(E)(ii).

The decision below does not create an exception to the requirements of 20 U.S.C. § 1415(f)(3)(E)(ii) or mandate relief for mere technical errors as the District contends. Rather, the court below found that the District displayed a pattern of indifference to the procedural requirements of the IDEA and carelessness in formulating M.C.'s IEP. The court noted that procedural errors during the IEP process "are particularly likely to be prejudicial and cause the loss of educational benefits," Pet. App. 9, and found that M.C. and M.N. suffered such substantive harm.

First, the court found that by failing to adequately document the amount and frequency of TVI ser-

vices offered—and then unilaterally changing the IEP without notice to, or the participation of, M.N.—the District committed two procedural violations of the IDEA. The court found that these procedural violations caused substantive harm because M.N. was "denied an opportunity to participate in the IEP drafting process" and was unable "to use the IEP to monitor and enforce the services" that M.C. was entitled to receive. *Id.* 15. The court also found prejudice resulting from these procedural violations because M.N. had to "seek[] the aid of counsel to clarify the amount of services provided." *Id.* 16.

Second, the court found that the District's failure to identify the AT devices M.C. required was a procedural violation that significantly impeded M.N.'s right to participate in the IEP process. The court held that the defective IEP was "useless as a blueprint for enforcement," because "M.N. had no way of confirming whether [the required AT devices] were actually being provided to M.C." *Id.* 17–18. Thus, the court below concluded that the District's procedural violation "infringed M.N.'s opportunity to participate in the IEP process and denied M.C. a FAPE." *Id.* 18.

These conclusions are both correct and specific to the facts of this case. They offer no basis for this Court's review.

B. The decision below does not conflict with the IDEA or the decision of any other court.

As explained above, the decision below rests on a determination that the District's procedural violations resulted in substantive harm under the standards set forth in 20 U.S.C. § 1415(f)(3)(E)(ii). The decision did not exempt certain procedural violations from the IDEA's substantive harm analysis as

claimed by the District. Rather, the court analyzed the District's procedural violations under the standards of § 1415(f)(3)(E)(ii), placing the decision squarely within the requirements of the IDEA. The District claims that the decision below conflicts with that of other courts of appeals that uniformly hold that a procedural violation can be harmless error if it does not affect the substantive rights of the parent or child. *See* Pet. 27–28 (citing cases). Because the District is wrong regarding the analysis applied by the court below, its claim of a circuit split is also wrong.

III. The court's paraphrase of the standard articulated in *Endrew F.* does not warrant review, and the *Endrew F.* standard has not yet been applied to the facts of this case.

Two months before the court below remanded this case to the district court for further proceedings, this Court articulated a more precise standard for evaluating whether a school district has complied substantively with the IDEA, holding that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. The court below quoted this standard and instructed the district court to apply it to determine the substantive reasonableness of the services offered to M.C. Pet. App. 21. In a single sentence, the court also paraphrased the *Endrew F.* standard: "In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can 'make progress in the general education curriculum,' taking into account the progress of his non-disabled peers, and the child's potential." Pet. App. 21–22

(quoting *Endrew F.*, 137 S. Ct. at 1000 (quoting the IDEA, 20 U.S.C. §1414(d)(1)(A)(i)(IV)(bb))).

The District argues that use of the word "remediate" creates a more stringent standard that contradicts this Court's "recent and clear precedent," Pet. 31, and the District urges the Court to grant certiorari to correct the alleged error. The Court should deny review because the court of appeals accurately quoted the *Endrew F.* standard, and because the standard has not yet been applied to the facts of this case, which will happen on remand. Having just announced the Court's *Endrew F.* standard last term, the Court should allow the lower courts to apply it in practice before revisiting the issue.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 2017