No. 13-1547

In the Supreme Court of the United States

RIDLEY SCHOOL DISTRICT, PETITIONER

v.

M.R., J.R., AS PARENTS OF E.R., A MINOR

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Individuals with Disabilities Education Act's "stay-put" provision, 20 U.S.C. 1415(j), provides that "during the pendency of any proceedings conducted pursuant to [20 U.S.C. 1415]," a child who is the subject of such proceedings "shall remain in [his or her] then-current educational placement * * * until all such proceedings have been completed."

The question presented is whether an appeal of a district court action commenced under Section 1415(i)(2) qualifies as a "proceeding[]" for purposes of the "stay-put" provision.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, authorizes parents to commence a civil action if necessary to resolve disputes with a state or local educational agency over the education of their children with disabilities. 20 U.S.C. 1415(i)(2). This case involves whether the IDEA's "stay-put" provision—which provides that a child shall remain in his "then-current educational placement" during the pendency of any "proceedings" conducted pursuant to Section 1415—applies to a parent's appeal of an adverse trial court decision. The district court

and the court of appeals both held that the stay-put provision does apply in these circumstances.

1. a. The IDEA provides federal grants to States "to assist them to provide special education and related services to children with disabilities." 20 U.S.C. 1411(a)(1). States receiving federal funds must make a "free appropriate public education" (FAPE) available to every child with a disability residing in the State. 20 U.S.C. 1412(a)(1)(A). As the "centerpiece" of this requirement, school districts must provide each child with an "individualized education program" (IEP). *Honig* v. *Doe*, 484 U.S. 305, 311 (1988). A proper IEP must comply with specific statutory requirements and establish a program of special education and related services that meets the unique needs of the child. *Ibid.*; 20 U.S.C. 1412(a)(4). The IDEA "contemplates that such education will be provided where possible in regular public schools, * * * but the Act also provides for placement in private schools at public expense where this is not possible." *School Comm. of the Town of Burlington* v. *Department of Educ.*, 471 U.S. 359, 369 (1985); 20 U.S.C. 1412(a)(10)(B).

b. The IDEA requires school districts to work collaboratively with parents to formulate an appropriate IEP for each child with a disability.[1] But Congress anticipated that this process would not always produce a consensus, and it therefore established procedures by which parents can seek administrative and judicial review of IDEA-related determinations made by school districts. See 20 U.S.C. 1415; *Burlington*, 471 U.S. at 368. Those procedures are intended to

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[1] See, *e.g.*, 20 U.S.C. 1400(d)(1)(B), 1414(b)(2)(A), (d)(1)(B), (3)(A)(ii), (3)(D), (4)(A)(ii)(III), and (e), 1415(b)(1), (3)-(5), and (f)(3)(E)(ii)(II).

"guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig*, 484 U.S. at 311-312.

Under the IDEA, if a child's parents are not satisfied with a proposed IEP, or with any matter relating to the "placement of the child, or the provision of a free appropriate public education to such child," 20 U.S.C. 1415(b)(6)(A), they may obtain "an impartial due process hearing" before a state or local educational agency, 20 U.S.C. 1415(f)(1)(A). If the parents bring their original administrative complaint before a local educational agency, "any party aggrieved by the findings and decision [of the local entity] * * * may appeal * * * to the State educational agency," which makes "an independent decision." 20 U.S.C. 1415(g).

Following the final decision in the state administrative proceedings, the losing party may seek further review in court. The IDEA provides that

> [a]ny party aggrieved by the findings and decision made [in the final administrative proceeding] shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States.

20 U.S.C. 1415(i)(2)(A). The court receives the records of the administrative proceedings, and it may hear additional evidence before rendering its decision. 20 U.S.C. 1415(i)(2)(C).

c. This case involves 20 U.S.C. 1415(j), which is commonly known as the IDEA's "stay-put" provision. That provision governs the educational placement of a

child with a disability during any period in which the parents and the school district are engaged in "any proceedings conducted pursuant to [20 U.S.C. 1415]." 20 U.S.C. 1415(j). The provision states, in relevant part, that

> during the pendency of any proceedings conducted pursuant to [20 U.S.C. 1415], unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child * * * until all such proceedings have been completed.

20 U.S.C. 1415(j).

In practice, the stay-put provision serves as a sort of automatic preliminary injunction, preventing a unilateral change of placement by a school district. This Court has emphasized that the provision's text is "unequivocal" and "states plainly" that the child "*shall*" remain in his current educational placement "during the pendency of any proceedings initiated under the Act." *Honig*, 484 U.S. at 323.

In most cases, the child's "then-current educational placement" for purposes of the stay-put provision is the one indicated in the last IEP that was agreed to by the parents and the school district. 20 U.S.C. 1415(j). That placement could either be a public school providing a FAPE, or a private school that the state or local educational agency was financing to satisfy its obligation to provide the child with a FAPE.

In some cases, however, parents may unilaterally move the child from the public school to a private school. In *Burlington*, this Court held that in those circumstances—unless the state or local educational agency agrees to the change—the private placement does not become the pendent placement protected by

the stay-put provision. 471 U.S. at 373-374. But the Court also recognized that if the parents obtain a favorable ruling in the administrative proceeding, that constitutes an agreement by the State to move the child to the private school for purposes of the stay-put provision. *Id.* at 372.

Regulations promulgated by the Department of Education largely codify the Court's analysis in *Burlington*. Under 34 C.F.R. 300.518(d), if the administrative decision "agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of [34 C.F.R. 300.518(a)]." And Section 300.518(a), in turn, provides that "during the pendency of any administrative or judicial proceeding regarding a due process complaint * * * , unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement." 34 C.F.R. 300.518(a).

2. E.R. is a child with learning disabilities. She attended kindergarten (2006-2007) and first grade (2007-2008) in the Ridley School District (the petitioner here), a local educational agency within the meaning of the IDEA. Pet. App. 4a. For those two school years, the school district and E.R.'s parents (respondents here) agreed to an IEP that included special education and related services at a public school within the district. *Ibid.* In the summer of 2008, however, respondents informed petitioner that for the 2008-2009 school year they were enrolling E.R. at the Benchmark School, a private school that specializes in teaching students with learning disabilities. *Ibid.*

a. In December 2008, respondents filed an IDEA due process complaint claiming that petitioner violated the IDEA by failing to provide E.R. with a suitable IEP. Pet. App. 37a. Among other remedies, respondents sought reimbursement for the cost of sending E.R. to the private school for second grade. *Ibid.* In April 2009, an administrative hearing officer concluded that petitioner had not provided E.R. with a FAPE for part of first grade and all of second grade, and it ordered petitioner to reimburse respondents for the costs of E.R.'s private education for second grade. *Id.* at 5a.

As a result of that administrative ruling, the private school became E.R.'s educational placement for purposes of the stay-put provision. See pp. 4-5, *supra*. E.R. remained at the private school for the third, fourth, and fifth grades, as this case progressed through the courts, and respondents paid for E.R.'s educational costs during those years. *Id.* at 5.

Petitioner filed an action seeking review of the hearing officer's decision in state court, and respondents removed the case to federal district court. Pet. App. 37a. In February 2011, the district court reversed the hearing officer's decision with regard to E.R.'s first and second grade years, finding that petitioner had offered E.R. a FAPE in the public school. *Id.* at 6a. Respondents appealed that decision to the Third Circuit.

b. In March 2011, while the appeal was pending in the Third Circuit, respondents sent petitioner a letter invoking the IDEA's stay-put provision and requesting reimbursement for E.R.'s private-school tuition from the date of the administrative decision. Pet. App. 6a. Petitioner declined to pay. *Ibid.* As a result,

respondents filed a new lawsuit in federal district court to require petitioner to pay the costs of E.R.'s pendent placement at the private school from April 2009, until the completion of the then-pending appeal in the Third Circuit. *Ibid.*

In May 2012, the Third Circuit affirmed the district court's decision in favor of petitioner on the underlying question of whether E.R. had been offered a FAPE. *Ridley Sch. Dist.* v. *M.R.*, 680 F.3d 260 (2012) (*Ridley I*).

In August 2012, the district court ruled for respondents in their separate lawsuit seeking tuition reimbursement under the stay-put provision. Pet. App. 35a-64a. The court concluded that the stay-put provision entitled respondents to reimbursement for private-school tuition governing the period from the date of the hearing officer's April 2009 decision in their favor through the May 2012 court of appeals' decision in *Ridley I*. *Id.* at 7a.

c. Petitioner appealed to the Third Circuit. It argued that the stay-put provision does not apply to any judicial appeals. The court of appeals rejected petitioner's argument and affirmed. Pet. App. 26a-34a.

The court of appeals concluded that "the statutory language and the 'protective purposes' of the stay-put provision lead to the conclusion that Congress intended stay-put placement to remain in effect through the final resolution of the dispute," which includes an appeal to a circuit court. Pet. App. 27a. The court emphasized Section 1415(j)'s reference to "*any* proceedings conducted pursuant to this section" and noted that those proceedings unambiguously encompass civil actions filed in federal district court. *Ibid.*

(citing 20 U.S.C. 1415(i)(2)(A)). The court of appeals bolstered its holding with reference to the stay-put provision's purpose of preserving the status quo until the dispute over the child's placement is resolved. *Id.* at 28a.-29a; see *id.* at 9a (noting that the stay-put provision reflects "Congress's conclusion that a child with a disability is best served by maintaining her educational status quo until the disagreement over her IEP is resolved").

Finally, the court of appeals stated that the Department of Education's implementing regulation "reinforced" the court's reading of the stay-put provision. Pet. App. 30a. That regulation provides that a child must remain in his or her "current educational placement" "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. 300.518(a). The court stated that the Department's "unbounded reference to 'any' judicial proceeding plainly extends the mandate through the conclusion of the appellate process." Pet. App. 30a. The court emphasized that even if it had considered the statutory language to be ambiguous, "we would have been obliged to give deference to this permissible construction by the agency" under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984). Pet. App. 30a.

DISCUSSION

This case does not warrant further review. The court of appeals correctly concluded that an appeal is part of a "civil action" to enforce the IDEA, 20 U.S.C. 1415(i)(2)(A), and therefore that the "proceedings" encompassed by the stay-put provision include appeals. That reading of the statute is faithful to the text; it is mandated by the Department of Education's

implementing regulation and other interpretive guidance; and it is consistent with the IDEA's goal of providing stability for children with disabilities until there is a final resolution of a legal dispute over their educational placement.

In the nearly 40 years since the IDEA was enacted, only three federal courts of appeals have addressed the question presented in precedential decisions. Although the D.C. Circuit adopted a contrary interpretation of the statute in a single decision 25 years ago, that court did not consider the Department of Education's interpretation of the statute, which is entitled to *Chevron* deference. There is reason to believe that the D.C. Circuit might reconsider its interpretation of the stay-put provision if ever required to do so in a future case. In these circumstances, the shallow split among the circuits is not a compelling reason for this Court to grant review of the issue at this time.

A. The Court Of Appeals' Decision Was Correct

The stay-put provision states that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child * * * until all such proceedings have been completed." 20 U.S.C. 1415(j). The court of appeals correctly held that the provision's reference to "proceedings conducted pursuant to this section" encompasses an appeal of an adverse district-court ruling to the court of appeals. Pet. App. 26a-34a.

1. The text of the stay-put provision clearly supports that conclusion. The term "proceeding" refers to "[t]he regular and orderly progression of a lawsuit"

or "[a]ny procedural means for seeking redress from a tribunal or agency." *Black's Law Dictionary* 1398 (10th ed. 2014). On its own, that term plainly encompasses appeals.

The stay-put provision modifies the term "proceedings" with the phrase "conducted pursuant to this section [*i.e.*, 20 U.S.C. 1415(j)]." The ordinary meaning of "pursuant to" is "[i]n compliance with," "under," or "[a]s authorized by." *Black's Law Dictionary* 1431. It follows that the provision's reference to "proceedings pursuant to this section" includes any proceeding that is authorized by Section 1415.

One of the proceedings authorized by Section 1415 is a "civil action with respect to the complaint presented pursuant to this section." 20 U.S.C. 1415(i)(2). The statute also makes clear that such an action "may be brought * * * in a district court of the United States." *Ibid.* The standard rule in a civil action in federal court is that a party has the right to appeal an adverse decision to the court of appeals. See 28 U.S.C. 1291; see generally Cassandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. Rev. 1219, 1226 (2013). Any such appeal is a continuation of the same "civil action" that gives rise to the appeal. See, *e.g.*, *Andersen* v. *District of Columbia*, 877 F.2d 1018, 1023 (D.C. Cir. 1989) ("[A]n appeal is part of a 'civil action."); Pet. App. 27a-28a.[2]

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[2] This case does not implicate the issue raised in *Coleman* v. *Tollefson*, No. 13-1333 (argued Feb. 23, 2015). There, the parties dispute whether a trial court dismissal and the ensuing appeal from that dismissal are part of the same "occasion[]" for purposes of the Prison Litigation Reform Act of 1995's so-called three strikes provision, 28 U.S.C. 1915(g). The United States has argued that the trial and appellate stages are distinct and may give rise to

Treating an appeal as part of the same "civil action" adjudicated in the lower court is consistent with this Court's frequent usage of that term when describing cases pending before it on writs of certiorari.[3] It is also consistent with ordinary speech. No one would say that a civil action has been definitively *resolved* or *concluded* when a district court's decision in that action is still in the process of being appealed.

Because the appeal of an adverse decision in a "civil action" brought under Section 1415(i)(2) is itself part of that action, it counts as a "proceeding conducted pursuant to [Section 1415]." 20 U.S.C. 1415(j). It is therefore covered by the stay-put provision. In addition to the Third Circuit in the decision below, the Ninth Circuit and two state appellate courts have embraced that same basic conclusion.[4] This Court has

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separate occasions. See U.S. Amicus Br. at 17-19, *Coleman*, *supra*. The question in this case, by contrast, is whether the trial and appellate stages of a suit are both part of the same "civil action" and thus are both "proceedings" encompassed by the stay-put provision, 20 U.S.C. 1415(j).

[3] See, *e.g.*, *Tolan* v. *Cotton*, 134 S. Ct. 1861, 1864 n.1 (2014) (per curiam) (referring to case pending in this Court as "this civil action"); *Ryan* v. *Gonzales*, 133 S. Ct. 696, 707 (2013) (noting that respondent in this court "is a state prisoner challenging the basis of his conviction in a federal civil action") (emphasis omitted); *Lewis* v. *City of Chi.*, 560 U.S. 205, 209 (2010) (referring to case pending in this Court as "this civil action"); *New York Times Co.* v. *Tasini*, 533 U.S. 483, 491 (2001) (same); *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 453 (1995) (same); *McLucas* v. *DeChamplain*, 421 U.S. 21, 30 (1975) (stating that "this [case] is a civil action").

[4] See Pet. App. 27a-28a; *Joshua A.* v. *Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1038 (9th Cir. 2009); *Special Sch. Dist. No. 1* v. *E.N.*, 620 N.W.2d 65, 69-70 (Minn. Ct. App. 2000); *North Kitsap Sch. Dist.* v. *K.W.*, 123 P.3d 469, 482 (Wash. Ct. App. 2005).

likewise indicated, albeit in dicta, that the stay-put provision applies "during the pendency of any proceedings initiated under the Act"—a formulation that plainly encompasses judicial appeals. *Honig* v. *Doe*, 484 U.S. 305, 323 (1988).

2. Interpreting the stay-put provision to encompass appeals advances the IDEA's core objectives. One of the stay-put provision's "obvious purposes" is "to reduce the chance of a child being bounced from one school to another, only to have the location changed again by an appellate court." *Flour Bluff Indep. Sch. Dist.* v. *Katherine M.*, 91 F.3d 689, 695 (5th Cir. 1996), cert. denied, 519 U.S. 1111 (1997). As the Ninth Circuit has explained, "the stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process. It is unlikely that Congress intended this protective measure to end suddenly and arbitrarily before the dispute is fully resolved." *Joshua A.* v. *Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1040 (9th Cir. 2009); see *Drinker* v. *Colonial Sch. Dist.*, 78 F.3d 859, 864-865 (3d Cir. 1996) ("The provision represents Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved.").

If the stay-put provision terminated after a district court decision and while an appeal was pending, parents would be faced with the "untenable choice" of either (1) removing their child from a private school that the court of appeals ultimately might find appropriate, or (2) risking being responsible for the cost of the private school for the duration of the appeal. Pet.

App. 29a. In many cases, financial pressure would force the parents to pull the child out of the private school. That result would undermine the goal of providing stability and opportunity for children with disabilities while disputes over their education are in the process of being resolved. See generally *Susquenita Sch. Dist.* v. *Raelee S.*, 96 F.3d 78, 84 (3d Cir. 1996) ("Without interim financial support, a parent's 'choice' to have his child remain in what the state has determined to be an appropriate private school placement amounts to no choice at all.").

3. For the reasons noted above, the stay-put provision unambiguously applies during a judicial appeal in a civil action brought under Section 1415. But even if the statute were ambiguous, any uncertainty as to its meaning would be resolved by the binding regulation issued by the Department of Education. See 34 C.F.R. 300.518(a).[5] That regulation—which is entitled to *Chevron* deference—unambiguously applies the stay-put requirements during any judicial appeals. Pet. App. 30a.

As explained above, Section 300.518(a) provides that a school district's stay-put obligations remain in effect "during the pendency of *any* administrative *or judicial proceeding* regarding a due process com-

[5] The original version of this regulation was adopted by the Department of Health, Education, and Welfare in 1977. See 42 Fed. Reg. 42,496 (Aug. 23, 1977) (codifying regulation at 45 C.F.R. 121a.513(a)); 20 U.SC. 1417(b) (1976) (granting Commissioner of Education authority to issue "rules and regulations as may be necessary" to carry out relevant provisions). The Department of Education was created in 1979, and it issued the current version of the regulation in 2006. See 71 Fed. Reg. 46,797 (Aug. 14, 2006); 20 U.S.C. 1406 (authorizing Secretary of Education to issue regulations to ensure compliance with IDEA).

plaint." 34 C.F.R. 300.518(a) (emphasis added); p. 5, *supra*. The broad phrase "any * * * judicial proceeding" unambiguously encompasses an appeal of a district court's ruling in a civil action on a due process complaint brought under Section 1415. 34 C.F.R. 300.518(a).

The Department of Education has repeatedly confirmed that its stay-put regulation governs a child's placement during any judicial appeals. For example, when the Department amended the regulation in 1999, it stated that the provision was

> based on longstanding judicial interpretation of [Section 1415(j)] that when a State hearing officer's or State review official's decision is in agreement with parents that a change in placement is appropriate, that decision constitutes an agreement by the State agency and the parents for purposes of determining the child's current placement *during subsequent appeals*.

64 Fed. Reg. 12,615 (Mar. 12, 1999) (emphasis added).

The Department has also rejected a proposal to amend the stay-put provision to achieve the result desired by petitioner. As part of a 2006 rulemaking, one commenter "recommended including language to invalidate the stay put agreement if the original decision [by a state hearing officer] is reversed * * * in a judicial appeal." 71 Fed. Reg. 46,710 (Aug. 14, 2006). In context, the commenter's reference to a reversal of the state administrative decision in a "judicial appeal" encompasses a reversal by the trial court in a civil action.[6] The Department declined to make the com-

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[6] There would have been no need to amend the regulation to specify that the stay-put requirement would expire at the end of an

menter's proposed change. In doing so, it again explained that the stay-put provision was intended to reflect "an agreement by the State agency and the parent for purposes of determining the child's current placement *during subsequent appeals*." *Ibid.* (emphasis added).

The Department has also issued several policy letters confirming this interpretation of its regulation. In one letter, it explained that the stay-put regulation applies "while a special education due process hearing *or subsequent judicial proceedings or appeals are pending*." Letter to Spindler, Office of Special Education Programs, 18 IDELR 1038, at 2 (Apr. 21, 1992). Applying that rule to the specific facts then at issue, the Department explained that there was no "judicial proceeding pending" for purposes of the stay-put provision because "the parents did not appeal the District Court decision to the Circuit Court of Appeals." *Ibid.*[7]

4. Petitioner's primary argument is that an appeal is not a "proceeding[] conducted pursuant to [Section 1415]" because the statute—although it authorizes "civil action[s]"—does not expressly refer to an appeal

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appellate judicial proceeding, because that was already explicit in the regulation. See 34 C.F.R. 300.514(a) (2006) (indicating that stay-put requirement would last "during the pendency of any administrative or judicial proceeding").

[7] See Letter to Hampden, Office of Special Education Programs, 49 IDELR 197, at 2 (Sept. 4, 2007) ("In a single-tier system, the result of the initial [state administrative] hearing must be treated as the child's current educational placement, pending *any judicial appeals* by either party.") (emphasis added); *ibid.* ("Once the second-tier [state level] placement decision is made, that placement becomes the child's placement during *any subsequent judicial appeals*.") (emphasis added).

of a district court decision. Pet. 16 (quoting 20 U.S.C. 1415(i)(2) and (j)). Petitioner also emphasizes Section 1415(i)(2)(A)'s language stating that any such civil action "may be brought * * * in a district court of the United States." *Ibid.* Petitioner argues that because an appeal is "no longer an action 'in a district court of the United States,'" it is outside the scope of the stay-put provision. *Ibid.* (quoting 20 U.S.C. 1415(i)(2)(A)).

Those arguments fail. Notably, petitioner does not deny that an appeal in an IDEA case is part of a "civil action" filed pursuant to Section 1415. That fact alone establishes that the stay-put provision—which applies during the pendency of "any proceedings conducted pursuant to [Section 1415]"—encompasses such appeals. 20 U.S.C. 1415(j). The statute's specification that a civil action "may be *brought* in any State court of competent jurisdiction or *in a district court of the United States*, without regard to the amount in controversy" merely indicates *where* the civil action may be *initiated*. 20 U.S.C. 1415(i)(2)(A). It does not establish that an appeal in that same civil action is outside the scope of the stay-put provision.[8]

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[8] Petitioner highlights (Pet. 17) other provisions of Section 1415 that establish rules for conducting the litigation in district court and for awarding attorney fees. But Congress's specificity with respect to those rules is not a reason to conclude that the stay-put provision does not apply during the pendency of an appeal. In fact, the attorney-fee provision strongly suggests the opposite conclusion. Section 1415(i) allows the district court to award fees "[i]n any action or proceeding brought under [Section 1415]," and it contemplates that the "prevailing party" may recover fees incurred until "the final resolution of the controversy." 20 U.S.C. 1415(i)(3)(B) and (F)(i). Congress thus clearly understood that the phrase "action or proceeding brought under [Section 1415]" would

Petitioner also denies that the Department of Education's stay-put regulation supports the court of appeals' interpretation of the statute. First, petitioner implies (Pet. 21 n.5; Pet. Reply Br. 5-6) that the Department has not interpreted the stay-put regulation to encompass judicial appeals. That is not correct. As explained above, the Department has consistently interpreted the regulation to apply during any judicial proceeding, including appeals. See pp. 13-15, *supra*. Moreover, petitioner does not seriously suggest that the key phrase in the regulation—"any * * * judicial proceeding regarding a * * * due process complaint"—can reasonably be read to *exclude* appeals. 34 C.F.R. 300.518(a).

Petitioner also argues (Pet. 21 n.5; Pet. Reply Br. 5-6) that the Department's regulation is not entitled to deference because the agency did not intend to expand upon or interpret the statutory text. It is true that when originally promulgating regulations to implement the statute's "Due Process Procedures," the Department of Health, Education, and Welfare generally stated that it had "elected to incorporate the[] [Section 1415] procedures substantially verbatim into the proposed regulations and to expand the statutory

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encompass not merely trial-stage proceedings, but also appeals. Petitioner's interpretation of Section 1415(j)'s key phrase ("proceeding[] conducted pursuant to [Section 1415]") appears to be inconsistent with that conclusion, insofar as it implies that the very similar language in Section 1415(i)(3)(B) ("action or proceeding brought under [Section 1415]") does not authorize an award of attorney fees incurred during judicial appeals. See *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860 (1986) ("The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning.") (citations and internal quotation marks omitted).

provisions only where additional interpretation seemed to be necessary." 41 Fed. Reg. 56,971 (Dec. 30, 1976). But the original stay-put regulation did *not* incorporate the statutory language "verbatim." *Ibid.* Rather, it substituted the phrase "any administrative or judicial proceeding regarding a [due process] complaint" for the statute's reference to "any proceedings conducted pursuant to this section." 45 C.F.R. 121a.513 (1977); 20 U.S.C. 1415(e)(3) (1976) (original stay-put provision).

The Department's use of the phrase "any * * * judicial proceeding" in the regulation—in lieu of the statutory formulation—reflects its judgment that the statute encompasses judicial appeals. 34 C.F.R. 300.518(a). Petitioner's theory that the Department understood that phrase simply to restate the statutory language itself depends on the premise that the Department interpreted that language to cover all judicial proceedings. That interpretation—which is not only reasonable, but also correct—is entitled to deference.

Finally, petitioner argues (Pet. 17-19) that if the statutory text is ambiguous concerning the stay-put provision's applicability to the appellate process, the clear-notice rule of statutory construction for Spending Clause legislation requires that ambiguity to be resolved in the school district's favor—without any recourse to the regulations or *Chevron* deference. Under this principle, "any conditions attached to a State's acceptance of funds must be stated unambiguously." *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 246 (2009). The purpose of the rule is to ensure that States have "clear notice" of their obligations when deciding whether to accept IDEA funds each year.

Arlington Cent. Sch. Dist. Bd. of Educ. v. *Murphy*, 548 U.S. 291, 296 (2006).

The clear-statement rule has no bearing here. As explained above, the text of the statute plainly indicates that the stay-put provision applies during the pendency of a "civil action," see pp. 9-12, *supra*, and the implementing regulation provides unambiguous notice to participating States that the provision encompasses "any * * * judicial proceeding," 34 C.F.R. 300.518(a).[9] In any event, the clear-statement rule does not require Congress to identify and proscribe the details of every condition in Spending Clause legislation with perfect specificity. Here, the statute's reference to "any proceedings conducted pursuant to this section"—including any "civil action" filed in district court—was sufficient to notify States that their stay-put obligations would extend to the appellate process. 20 U.S.C. 1415(i)(2)(A) and (j).

B. The Question Presented Does Not Warrant Review At This Time

Petitioner asserts that review is warranted because the court of appeals' decision is in "direct conflict" with the D.C. Circuit's 1989 decision in *Andersen* and presents a "recurring question" of "exceptional importance." Pet. 12, 22 (capitalization altered). Neither consideration provides a compelling basis for this Court's intervention.

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[9] Petitioner is wrong to suggest (Pet. Reply Br. 4-5) that the Spending Clause clear-statement rule trumps *Chevron* deference. On the contrary, this Court has regularly relied on agency regulations when determining whether that scheme provides the clear notice required under the Spending Clause. See, *e.g.*, *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 183 (2005); *Davis* v. *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643-644, 647-648 (1999).

1. Petitioner is correct that there is a shallow division of authority on the question presented. In addition to the Third Circuit in this case, the Ninth Circuit and two state appellate courts have interpreted the stay-put provision to apply to judicial appeals in published decisions. See note 4, *supra* (citing cases). By contrast, the D.C. Circuit has taken the opposite view.[10] In *Andersen*, 877 F.2d at 1023-1024, that court held that the stay-put provision does *not* apply to appeals. Notably, however, none of the parties in *Andersen* invoked the Department of Education's regulation implementing the stay-put provision. See Resp. Br. in Opp. at 11 n.2. The D.C. Circuit has never considered the regulation or addressed whether it is entitled to *Chevron* deference.

For that reason, the narrow circuit split over the question presented does not warrant this Court's review at this time. That split could easily resolve itself, if and when the D.C. Circuit ever has occasion to consider the issue again. In any such case, that court could address—for the first time—whether the Department of Education's regulation interpreting the provision to apply to "any * * * judicial proceeding" is a reasonable construction entitled to *Chevron* deference. The court could also look to the Department's policy letters and this brief, which take the same position. See pp. 13-15, *supra*.

If the D.C. Circuit concluded that the Department's interpretation of the stay-put provision is rea-

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[10] The Sixth Circuit has also held—in an unpublished decision—that the stay-put provision does not cover judicial appeals. *Kari H.* v. *Franklin Special Sch. Dist.*, 125 F.3d 855 (Tbl.), Nos. 96-5066, 96-5178, 1997 WL 468326, at *6 (1997) (per curiam) (relying on *Andersen*).

sonable, it could defer to that interpretation in accordance with *National Cable & Telecommunications. Ass'n* v. *Brand X Internet Services*, 545 U.S. 967 (2005). As that case explains, "[o]nly a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation * * * displaces a conflicting agency construction." *Id.* at 982-983. The D.C. Circuit's *Andersen* decision did not consider the Department interpretation at all, much less conclude that it is "unambiguously foreclose[d]" by the statute. *Ibid.*

2. As explained above, the IDEA's stay-put provision protects children with disabilities during the pendency of any administrative or judicial dispute over their educational placement. The proper interpretation of that provision therefore involves an important issue of federal law. Nonetheless, the specific question presented in this case has not been litigated with any great frequency. In the nearly 40 years since the stay-put provision was enacted, its application to judicial appeals has been addressed in precedential opinions by only three federal courts of appeals.

In these circumstances, there is no need for this Court's intervention in this case. The court of appeals' decision below was correct, and there is good reason to believe that the shallow split of authority among the courts of appeals may resolve itself if the question presented continues to arise. Review of that question is therefore unwarranted at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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