No. 22-13778

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMES HOWELL, JR.,

Plaintiff-Appellant

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States as amicus curiae certifies that, in addition to those identified in the brief filed by plaintiff-appellant, the following persons may have an interest in the outcome of this case:

1. Bell Hughes, Aileen, U.S. Department of Justice, Assistant United States Attorney, Northern District of Georgia;
2. Buchanan, Ryan K., U.S. Department of Justice, United States Attorney, Northern District of Georgia;
3. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for the United States;
4. Lamm, Katherine E., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
5. Riley, Nicolas Y., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
6. Robin-Vergeer, Bonnie I., U.S. Department of Justice, Civil Rights Division, counsel for the United States.

The United States certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Katherine E. Lamm
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Date: March 27, 2023

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the relief available under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. 12182, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. Both statutes prohibit disability discrimination at most private universities, which typically receive federal financial assistance. The Department of Justice has significant responsibility for the implementation and enforcement of Title III and Section 504, see 42 U.S.C. 12186(b), 12188(b); 29 U.S.C. 794(a), 794a; 28 C.F.R.

Pt. 36, including coordinating the enforcement of Section 504 by all federal agencies, see 28 C.F.R. Pt. 41 & App. A (Exec. Order No. 12,250). The Department of Education has responsibility for the implementation and enforcement of Section 504 with respect to programs or activities to which it provides federal financial assistance, including universities. See 29 U.S.C. 794(a), 794a; 34 C.F.R. 104.4, 104.6, 104.43-44. The United States regularly files amicus briefs addressing the proper interpretation and application of Title III and Section 504. See, *e.g.*, U.S. Br. as Amicus Curiae, *Campbell* v. *Universal City Dev. Partners*, No. 22-10646 (11th Cir. June 9, 2022) (Title III); U.S. Br. as Amicus Curiae, *Silva* v. *Baptist Health S. Fla.*, 856 F.3d 824 (11th Cir. 2017) (No. 16-10094) (Title III and Section 504); U.S. Br. as Amicus Curiae, *Argenyi* v. *Creighton Univ.*, 703 F.3d 441 (8th Cir. 2013) (No. 11-3336) (Title III and Section 504).

The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE

Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12181 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. 794, require most private universities to provide reasonable accommodations to students with

disabilities.[1] The question the United States addresses here is whether a medical student who was unlawfully denied a note-taking accommodation under those statutes may obtain as relief an injunction permitting him to restart his medical education afresh.

STATEMENT OF THE CASE

1. Statutory And Regulatory Background

Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. 12182(a).[2] Among other things, Title III prohibits discriminatorily denying an individual with a disability "the opportunity * * * to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity," or providing an "opportunity to participate * * * that is not equal to that afforded to other individuals." 42 U.S.C. 12182(b)(1)(A)(i)-(ii).

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[1] Although Title III and the regulations implementing Section 504 in the higher education context use the term "reasonable modification," it is often used interchangeably in the case law with the term "reasonable accommodation." Here, we primarily use "reasonable accommodation," consistent with the briefing below.

[2] A "postgraduate private school" is a place of public accommodation. 42 U.S.C. 12181(7)(j).

The statute defines "discrimination" to include the "failure to make reasonable modifications in policies, practices, or procedures," when "necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter [their] nature." 42 U.S.C. 12182(b)(2)(A)(ii); see also 28 C.F.R. 36.302. A public accommodation also may violate Title III when it fails to provide "auxiliary aids and services" necessary to ensure that an individual with a disability is not "excluded, denied services, segregated, or otherwise treated differently" from others, unless providing such aids or services would constitute a fundamental alteration or result in an undue burden. 42 U.S.C. 12182(b)(2)(A)(iii); see also 28 C.F.R. 36.303.

Section 504 prohibits discrimination on the basis of disability "under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a). The Department of Education's implementing regulations provide, in relevant part, that qualified students with disabilities shall not be excluded from participation in, denied the benefits of, or otherwise discriminated against in the "aid, benefits, or services" of a postsecondary education program. 34 C.F.R. 104.43(a). Nor may such students be excluded "from any course, course of study, or other part of its education program or activity." 34 C.F.R. 104.43(c). A postsecondary educational program also must modify its "academic requirements" and provide "auxiliary

aids" and "other similar services" to ensure that students with disabilities do not experience denial of benefits, exclusion, or discrimination. 34 C.F.R. 104.44(a) and (d).

Both Title III and Section 504 permit private civil suits for injunctive relief. Title III incorporates the remedies available in a provision in Title II of the Civil Rights Act of 1964 (addressing public accommodations), which include "preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." 42 U.S.C. 2000a-3(a); see 42 U.S.C. 12188(a)(1); 28 C.F.R. 36.501(a). Section 504 incorporates the remedies of Title VI of the Civil Rights Act, 42 U.S.C. 2000d *et seq.* (addressing prohibited discrimination by recipients of federal financial assistance), which have been interpreted to encompass "any appropriate relief," including an injunction. 29 U.S.C. 794a(a)(2); see *Barnes* v. *Gorman*, 536 U.S. 181, 185, 187 (2002); *Alexander* v. *Sandoval*, 532 U.S. 275, 279 (2001).

2. Relevant Factual Background [3]

Plaintiff James Howell, Jr., was accepted to Morehouse School of Medicine in 2017 for its prospective class of 2021. Doc. 24, at 16 (Am. Compl.).[4] Howell

[3] We take the allegations in the complaint as true, as required at the Rule 12(b)(6) stage.

[4] "Doc. __" refers to the document number on the district court docket, *Howell* v. *The Morehouse School of Medicine, Inc.*, No. 1:20-cv-3389 (N.D. Ga.).

has been diagnosed with severe attention deficit/hyperactivity disorder and other anxiety disorders, which are "mental impairments that substantially limit[] and significantly restrict[] major life activities" such as "learning, concentrating, and thinking." Doc. 24, at 14. In light of this disability, Howell requested, among other things, a "note-taking accommodation" under which he would receive lecture notes for each class. Doc. 24, at 19-20. A few weeks before the start of Howell's first semester, Morehouse agreed to the accommodation, with an expectation of providing notes 24-to-48 hours after each class. Doc. 24, at 20, 26-27.

When classes began, however, the note-taking accommodation was not in place. Doc. 24, at 33-34. A few weeks into the semester, Howell complained to school officials that he still did not have a note-taker and was struggling to keep up in his courses—which featured a lecture-heavy, cumulative curriculum—and therefore feared failing his exams. Doc. 24, at 33-34. Eventually, Howell began receiving notes for some classes, but only nine or ten days after the lectures had occurred. Doc. 24, at 43. Similar problems persisted throughout the school year: Howell calculated that he ultimately received notes for only 61% of his classes, with an average turnaround time of 4.17 days. Doc. 24, at 45.

Howell passed his first year with a grade-point average of 2.49/4.00. Doc. 24, at 46. He initially failed one class for which he did not receive over 30% of the notes. Doc. 24, at 47. Although Howell later took a comprehensive exam that

enabled him to pass the course (albeit with the lowest-possible test score), his academic record still reflects the initial failing grade. Doc. 24, at 48. Howell avers that grades are important to acceptance to residency programs. Doc. 24, at 46.

Subsequently, Morehouse "suggested" that Howell take the second-year medical school curriculum over two years instead of one, an option known as "academic deceleration." Doc. 24, at 51. Although Howell understood that the prolongment of his medical education would be viewed unfavorably by residency programs (as a Morehouse dean warned), he opted to decelerate. Doc. 24, at 52-53. He did this because of his "mounting lack of faith" in the school's ability to deliver the note-taking accommodation, his "poor grades," and "emotional turmoil." Doc. 24, at 52.

Morehouse granted Howell the note-taking accommodation for his next year of medical school, but problems persisted. Doc. 24, at 53. Howell calculated that he received notes for 88% of his classes, but that they arrived on an average 14.61-day turnaround. Doc. 24, at 58. In one course, he received no notes for five of six classes prior to the final exam. Doc. 24, at 58. As a result, Howell again struggled and achieved a grade-point average of 2.68. Doc. 24, at 58.

In Howell's third year, he began to receive notes "more or less adequately." Doc. 24, at 61. But because he had not received timely or complete notes during the preceding two years, and because the school's curriculum was cumulative, he

remained at a disadvantage: as he puts it, he was "unable to properly learn and understand" the material in his third year (which focused on abnormal human physiology) because he never had an adequate opportunity to learn the material from his first two years (which focused on normal human physiology). Doc. 24, at 62. Howell thus failed his third-year classes. Doc. 24, at 74. He attributes his poor grades to Morehouse's failure to provide him the note-taking accommodation during his first two years and the additional time he had to spend trying to remedy that failure. Doc. 24, at 74.

Morehouse attempted to dismiss Howell after his third year based on his failing grades and his inability to complete the first- and second-year curricula within three years. Doc. 24, at 74-75, 98. The school's president, however, reversed the dismissal on Howell's appeal because he had not received the note-taking accommodation during his first two years and because the school provided him with a delayed dismissal hearing. Doc. 24, at 112. Following his reinstatement, school officials proposed that Howell resume his studies five weeks into the 2020-2021 school year and that he be allowed to retake the two courses he failed in his third year. Doc. 24, at 113-114. Howell rejected this proposal as "inequitable and prejudicial." Doc. 24, at 114. Instead, he sought to "restart his medical education" with full accommodations so that he would have "a solid foundational knowledge base" in order "to become the best physician he possibly

can" and to have his academic record "deleted" so that he would not be "forever prejudiced." Doc. 24, at 116-117. He has not reenrolled at Morehouse. Doc. 47, at 25.

3. District Court Proceedings

Howell sued Morehouse in the Northern District of Georgia. See Doc. 1. The operative complaint contains 15 counts and alleges that Morehouse failed to reasonably accommodate him or provide him auxiliary aids or services in violation of Title III and Section 504. Doc. 24, at 119-126, 149-156. The complaint alleges that Morehouse is a program or activity that receives federal financial assistance. Doc. 24, at 7. Howell seeks an injunction permitting him to restart medical school and erase his prior academic record. Doc. 24, at 328, 330.

The district court granted Morehouse's motion to dismiss. Doc. 47. The court held, in relevant part, that Howell had stated a valid failure-to-accommodate claim under both Title III and Section 504 because he met his burden of pleading that he had a disability, was otherwise qualified within the meaning of the statutes, and that Morehouse denied him the reasonable accommodation. Doc. 47, at 40-48.[5] Specifically, the court held that Howell sufficiently alleged that Morehouse's failure to provide Howell with the note-taking accommodation ultimately deprived

[5] "ADA and [Rehabilitation Act] claims are governed by the same substantive standard of liability." *Silva* v. *Baptist Health S. Fla., Inc.*, 856 F.3d 824, 830-831 (11th Cir. 2017).

him of an opportunity to advance on a regular schedule and succeed academically on the same footing as his peers. Doc. 47, at 45-47. But the court nevertheless concluded that it could not grant Howell any of the relief he sought to remedy that violation. Doc. 47, at 63. The court stated that "Howell's requested relief of restarting his entire medical education with a deletion of his prior academic record is improper under the ADA or [Section 504]." Doc. 47, at 61. The court based that conclusion on an unpublished district-court decision, *Wilf* v. *Board of Regents of the University System of Georgia*, which held that "[r]emoving grades from a college transcript, even if the plaintiff were to demonstrate an ADA or Sec. 504 violation, is simply not appropriate relief under the ADA or Sec. 504." No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010); see Doc. 47, at 62.

As relevant here, the district court further reasoned that it could not grant Howell any additional relief because Morehouse already had offered him the opportunity to retake the classes he failed in his third year, and Howell had not alleged that he would return to Morehouse if offered anything short of the opportunity to restart medical school with a clean slate. Doc. 47, at 62-63.[6] In a

[6] The district court also held that Howell had not sufficiently pleaded a claim for damages under Section 504, which requires "deliberate indifference" on the part of a person who is capable of making an official decision on the defendant's behalf. Doc. 47, at 58-61 (citing *Silberman* v. *Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019) and *Saltzman* v. *Board of Comm'rs of N. Broward Hosp. Dist.*, 239 F. App'x 484, 487-488 (11th Cir. 2007)).

separate order, the court denied Howell's subsequent motion for reconsideration and held the case is moot. Doc. 74, at 18-21, 30-34.

Howell timely appealed the district court's orders dismissing his complaint on the merits, denying his motion for reconsideration, and dismissing the complaint as moot. Doc. 87.

SUMMARY OF ARGUMENT

This Court should vacate the district court's decision granting Morehouse's motion to dismiss because it rests on an incorrect premise that restarting an educational program with a clean slate is not a form of relief available under Title III or Section 504. The court's holding that such a remedy is categorically unavailable under Title III and Section 504—even when a plaintiff has stated a valid failure-to-accommodate claim—has no basis in the text of either statute or in binding case law. It also contravenes basic principles that guide courts in providing equitable relief. Indeed, such an outcome might diminish educational institutions' incentives to fully and expediently implement needed accommodations.

While restarting school afresh might not be appropriate in many cases, it nevertheless remains an important remedial option in certain cases where the failure to provide timely accommodations renders other remedies inadequate. A court's analysis of the propriety of a particular form of relief should hew to

traditional equitable principles, including whether the remedy is appropriate to correct the violation and consistent with underlying statutory purposes. This Court therefore should vacate and remand for the district court to consider the sufficiency of Howell's pleadings under traditional equitable principles, rather than impose an incorrect categorical rule regarding unavailable forms of relief.

ARGUMENT

THE DISTRICT COURT ERRED BY CATEGORICALLY REJECTING THE AVAILABILITY OF RESTARTING SCHOOL AFRESH AS RELIEF INSTEAD OF APPLYING NORMAL EQUITABLE PRINCIPLES

A. Restarting School Afresh Is Not Forbidden Relief Under Title III Or Section 504

The district court erred in holding that restarting medical school with a clean slate is not proper relief under the ADA or Section 504. Doc. 47, at 61; Doc. 74, at 18-19. This conclusion contravenes foundational cases defining courts' authority to craft equitable remedies and has no basis in either statute or its implementing regulations. Indeed, other cases and the federal government's longstanding enforcement practice show that remedies for failing to provide needed accommodations may include expungement of academic records and opportunities to redo coursework. Such remedies may be appropriate to afford students with disabilities an equal chance to participate in schools' academic programs.

As the Supreme Court has explained, "we presume the availability of all appropriate remedies"—*i.e.*, those necessary to rectify a legal wrong—"unless

Congress has expressly indicated otherwise." *Franklin* v. *Gwinnett Cnty. Schs.*, 503 U.S. 60, 66 (1992); see also *Disabled in Action* v. *Board of Elections in City of N.Y.*, 752 F.3d 189, 198 (2d Cir. 2014) (same, regarding injunctive relief available under Title II and Section 504).[7] Both Title III and Section 504 make prospective injunctive relief available to individuals who experience disability discrimination. See 42 U.S.C. 12188(a)(1) (incorporating into Title III the remedies of 42 U.S.C. 2000a-3(a), which includes "preventive relief, *including an application for a permanent or temporary injunction*, restraining order, or other order") (emphasis added); 29 U.S.C. 794a(a)(2) (incorporating into Section 504 the remedies of Title VI, 42 U.S.C. 2000d *et seq.*, which the Supreme Court has interpreted to include injunctive relief). Neither statute (or its implementing regulations) contains express limitations on the types of prospective injunctive relief that may be sought.[8]

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[7] The scope of relief available to individuals is the same under Title II and Section 504. See 42 U.S.C. 12133 ("The remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title."); see also 42 U.S.C. 12201 (the ADA should not be construed to provide less protection than the Rehabilitation Act).

[8] Courts have understood "preventive relief" for purposes of Title III to be synonymous with prospective relief (such as an injunction), in contrast with retrospective relief (such as monetary damages), which is unavailable under Title III. See, *e.g.*, *A.L. by and through D.L.* v. *Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270, 1290 (11th Cir. 2018) ("Title III provides for only injunctive relief."); *Fischer* v. *SJB-P.D., Inc.*, 214 F.3d 1115, 1120 & n.6 (9th Cir. 2000)

The district court here held that Howell sufficiently pleaded that Morehouse violated Title III and Section 504 by denying him the note-taking accommodation, but then held that it was powerless to remedy that violation. In so doing, the court relied on a single, unpublished decision by another judge in the same district. Doc. 47, at 61; Doc. 74, at 18-19. That decision, *Wilf* v. *Board of Regents of the University System of Georgia*, held that "[r]emoving grades from a college transcript" is "simply not appropriate relief under the ADA or Sec. 504" in a failure-to-accommodate case. No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010). *Wilf* offered no authorities or reasoning in support of this conclusion, other than a reference to its own statement "in a prior order." *Ibid.* But the district court in Howell's case did not cite any such order; it is not even clear to which "prior order" *Wilf* referred. Indeed, the district court here never explained why it treated *Wilf*—a decision cited by Morehouse (Doc. 36, at 31-32) but apparently by no other court—as effectively binding. Nor does there appear to be any controlling authority for the proposition that grade expungement or the opportunity for a fresh start are *never* appropriate relief under Title III or Section 504, much less where, as here, a plaintiff pleads that his academic performance

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(explaining that under Title III, "a private individual can only obtain 'preventive relief,' which means injunctions and temporary restraining orders" and not damages) (citing *Newman* v. *Piggie Park Enters., Inc.*, 390 U.S. 400 (1968) (per curiam)).

suffered because the school failed to provide a reasonable accommodation. Doc. 47, at 44-48.

This Court and other courts of appeals have implicitly endorsed remedies under the ADA and Section 504, such as grade expungement, that are similar to those that Howell seeks here. For example, in *Rudnikas* v. *Nova Southeastern University*—which postdates the district court's decision in this case—this Court, over a mootness objection, allowed a law student to pursue an injunction ordering the expungement of a failing grade (which had caused his dismissal) and reversal of a suspension as remedies for retaliation under Title III and Section 504. No. 21-12801, 2022 WL 17952580, at *6 (11th Cir. Dec. 27, 2022) (per curiam). The Court reasoned that the student's dismissal from school did not render his appeal moot, because "if we granted him the requested relief, [he] would be reinstated." *Ibid.* This reasoning assumes that academic record expungement and modification are viable remedies under Title III and Section 504. See also, *e.g.*, *Constantine* v. *Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 496 (4th Cir. 2005) (allowing Section 504 claim to proceed that sought as relief expungement of a failing grade or "re-examination under reasonable circumstances").[9]

[9] Likewise, the district court erred here in concluding that Howell's failure-to-accommodate claim was "moot." The court held the claim was moot both because Howell allegedly sought impermissible relief and because after he filed suit, Morehouse reversed Howell's dismissal and offered him the opportunity to retake his third-year classes—a "portion" of his desired relief. Doc. 47, at 62-64,

The Fourth Circuit's decision in *Shepard* v. *Irving*, 77 F. App'x 615 (4th Cir. 2003), cert. dismissed, 542 U.S. 959 (2004), similarly suggests that Howell's proposed remedy is permissible. In *Shepard*, which arose under Title II and Section 504, the court rejected a state university's argument that a student's failing grade and plagiarism conviction did not constitute "a continuing injury" for purposes of seeking relief under Title II pursuant to *Ex parte Young*, holding instead that record expungement was a viable remedy. *Id.* at 620. The court further held that the student could seek, in the alternative, a new Honor Code hearing on the grade and conviction, conducted with previously-denied parental or legal representation—"circumstances in which her disability does not disadvantage her." *Ibid.*

The district court here rejected *Shepard* because it was "not binding precedent" and because "Howell has not alleged that he has accepted [Morehouse]'s plan for entry so, at this point, he would have no standing under

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83; Doc. 74, at 30-34. Mootness, however, arises "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell* v. *McCormack*, 395 U.S. 486, 496 (1969). The court's conclusion that it was powerless to issue the relief Howell sought, even if it were correct as a legal matter (which it was not), would not eliminate the existence of a live dispute. Nor would Morehouse's voluntary offer of *partial* relief. Cf. *Campbell-Ewald, Co.* v. *Gomez*, 577 U.S. 153, 161-162 (2016).

Shepard." Doc. 47, at 62.[10] The plaintiff in *Shepard*, however, already had graduated, see 77 F. App'x at 617; it is not evident why Howell's non-acceptance of Morehouse's offer to resume his studies (while seeking to return on more favorable terms) would render his request for relief more suspect as a matter of standing. Further, the district court ignored the common premises that underpin both Shepard's claim and Howell's—that blemishes on an academic record that were produced by disability discrimination may have an ongoing impact on the student's career, and that only a "do-over" may rectify an academic process that was conducted without reasonable accommodations. See also *Constantine*, 411 F.3d at 496.

Indeed, relief of the nature Howell proposes—including opportunities to re-take courses or to have poor grades expunged—is well established in the federal government's resolution of students' ADA and Section 504 complaints alleging denials of accommodations or other discrimination. While the scope of relief available through voluntary agreements may not precisely mirror the bounds of courts' equitable powers, federal agency practice nevertheless illustrates the types

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[10] The district court cited, by way of contrast, *Alejandro* v. *Palm Beach State College*, 843 F. Supp. 2d 1263, 1273 (S.D. Fla. 2011). Doc. 47, at 62. But *Alejandro* is inapposite, as the question at issue there was whether a former student continued to have standing for a previously-granted injunction permitting her to bring a service dog to class, which the court held was resolved by an affidavit averring to the student's continued enrollment. 843 F. Supp. 2d at 1273.

of remedies needed to achieve statutory compliance. The Department of Education's Office for Civil Rights, for example, has resolved many such student complaints through agreements with schools to provide remedies that include grade expungement and opportunities to retake courses. See, *e.g.*, American Univ. of Health Sci., No. 09-20-2413 (U.S. Dep't of Educ., Off. for C.R. Oct. 19, 2020) (agreement requiring university either to expunge or change grade to incomplete for student who was denied testing accommodation and allow her to retake course with accommodations, at no cost, and receive new grade), https://perma.cc/DEJ3-GHZ9; Dallas (TX) Indep. Sch. Dist., Nos. 06171006 & 06171336 (U.S. Dep't of Educ., Off. for C.R. Aug. 23, 2017) (agreement requiring school to offer re-enrollment and expungement of low grade, along with either retaking course or redoing tests and graded coursework, to student who was denied accommodation and experienced retaliation), https://perma.cc/PM86-L3HG[11]; Legacy Traditional Sch. (AZ), No. 08-17-1078 (U.S. Dep't of Educ., Off. for C.R. May 15, 2017) (agreement requiring school to offer student re-enrollment and for parties to consider options including retaking or remediating course affected by teacher's failure to implement note-taking accommodation), https://perma.cc/DHQ7-TMGR; Onondaga-Courtland-Madison Bd. of Coop. Educ. Servs., No. 02-15-1141 (U.S.

[11] This agreement is undated, but its date appears on the Office for Civil Rights Recent Resolution Search website (https://ocrcas.ed.gov/ocr-search), where all of the cited agreements may be found.

Dep't of Educ., Off. for C.R. Sept. 17, 2015) (agreement requiring school to allow student either to retake courses during semester in which she allegedly experienced harassment, or receive a tuition refund), https://perma.cc/RKX6-SA3H; Francis Marion Univ., No. 11-14-2011 (U.S. Dep't of Educ., Off. for C.R. Jan. 8, 2014) (agreement requiring university to allow a student to retake all of his courses for one semester in which he was denied adequate auxiliary aids or services, at no cost, and expunge the student's academic records for that semester), https://perma.cc/3BJM-WW4X.

To be sure, the relief Howell seeks here—restarting medical school—is more extensive than what the students obtained in the cases discussed above. Nevertheless, the fact that his request is expansive does not render it categorically unavailable under Title III or Section 504. As explained in Section B, below, the traditional principles for granting equitable relief should guide the district court's eventual consideration of whether allowing Howell to restart school would be an appropriate way to rectify Morehouse's alleged unlawful failure to provide his note-taking accommodation.

B. Whether Morehouse May Be Ordered To Allow Howell To Restart School Afresh Should Be Analyzed Under Traditional Principles For Granting Equitable Relief

Whether Howell may obtain as relief the opportunity to restart school with a clean slate is not a question that can be answered categorically, but instead must be

analyzed within the relevant statutory framework and under the normal principles that guide courts in determining whether to afford equitable relief.

Because Congress did not expressly constrain courts' ability to fashion injunctive relief in Title III and Section 504, courts must assess whether the chosen relief is "appropriate" to correct the underlying violation. See *Franklin*, 503 U.S. at 66; see also *Disabled in Action*, 752 F.3d at 189. In making that assessment, the rule is "well settled" that, where Congress has provided a right to sue for the invasion of rights, courts may order "any available remedy to make good the wrong done." *Barnes* v. *Gorman*, 536 U.S. 181, 189 (2002) (quoting *Bell* v. *Hood*, 327 U.S. 678, 684 (1946)); see also *Franklin*, 503 U.S. at 66. The "nature and scope of the remedy are to be determined by the violation," *Milliken* v. *Bradley*, 433 U.S. 267, 281-282 (1977), with the ultimate goal of providing a plaintiff "complete relief under a statute," *Transcontinental Gas Pipe Line Co.* v. *6.04 Acres, More or Less*, 910 F.3d 1130, 1152 (11th Cir. 2018) (citation omitted), cert. denied, 139 S. Ct. 1634 (2019).

The propriety of a remedy also must be measured against the purpose of the statute that the defendant has been found to violate. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417 (1971). Thus, while a district court has "discretion" in crafting a remedy to redress the violation, see *Franklin*, 503 U.S. at 73-74, a court

should exercise that discretion to craft a remedy that is tethered to the achievement of that statutory purpose, see *Albemarle*, 422 U.S. at 417.

Here, the district court concluded that Howell sufficiently alleged that Morehouse violated Title III and Section 504 by failing to provide Howell the promised note-taking accommodation. To determine whether, if he proved his case, Howell would be entitled to his proposed remedy—namely, an opportunity to restart medical school afresh—the district court must consider whether that remedy would be appropriate to redress the discriminatory effect of Morehouse's conduct and to further Title III and Section 504's purposes. Those statutory purposes include providing people with disabilities an equal opportunity to participate in educational programs, including at the postsecondary level. See, *e.g.*, 29 U.S.C. 701(a)(5) and (b)(5) (finding that individuals with disabilities "continually encounter various forms of discrimination" in the "critical area[]" of "education" and stating that the Rehabilitation Act's purposes include ensuring that students with disabilities "have opportunities for postsecondary success"); 42 U.S.C. 12101(a)(3) and (a)(6) (likewise finding that discrimination against individuals with disabilities persists in the "critical area[]" of "education" and noting that such individuals are "severely disadvantaged" with respect to education).

In assessing whether the remedy is "appropriate," *Franklin*, 503 U.S. at 66, the district court also may consider the nature and consequences of Morehouse's

failure to provide the required accommodation, and any alternatives proposed by Morehouse for redressing Howell's injury. Relevant factors in this analysis may include not only Howell's allegations about the cumulative effect of Morehouse's failure to provide him with the accommodation and its impact on his grades and employment prospects, but also Morehouse's alternative proposal to allow Howell to retake two of his third-year courses.

Accordingly, this Court should vacate and remand for further proceedings so that the district court may consider, in due course, the appropriateness of Howell's requested remedy—restarting medical school afresh—under the normal principles for granting equitable relief.

CONCLUSION

For these reasons, this Court should vacate the district court's dismissal of Howell's reasonable accommodation claims and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN:

(1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5007 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2019, in 14-point Times New Roman font.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: March 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. I further certify that four paper copies identical to the electronically filed brief will be mailed to the Clerk of the Court by Federal Express.

s/ Katherine E. Lamm
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