

IDEA EXHAUSTION RULE APPLIES ONLY TO CLAIMS SPECIFICALLY INVOLVING FAPE

Education Alert
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On February 22, 2017, the U.S. Supreme Court issued an important decision concerning the legal remedies that parents have when they feel their disabled child is being ill-served by a school district. This decision discusses the interaction between three federal laws that protect the rights of students with disabilities: the Individuals with Disabilities Education Act (IDEA), the Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA).

In *Fry v. Napoleon Community Schools*, the parents of a student with cerebral palsy filed a federal lawsuit against the school district, alleging that the school violated the ADA by not allowing the student's service dog (named Wonder, the Goldendoodle) into school facilities.

The District Court and 6th Circuit Court of Appeals dismissed the lawsuit, concluding that the parents failed to exhaust their administrative remedies under the IDEA. Even though the federal lawsuit only alleged violations of the ADA, the Court concluded the claims were essentially cloaked as IDEA claims, and therefore the procedures under the IDEA must be followed.

The parents appealed the decision to the U.S. Supreme Court, arguing that their claim had nothing to do with the IDEA, but was rather based on the ADA's requirement that the school provide reasonable accommodations to disabled students. The parents asserted they should not be required to follow the administrative procedures under the IDEA, but rather be allowed to go straight to the Federal Courts to seek relief (which included monetary damages).

Upon hearing the case, the Justices of the Supreme Court unanimously agreed with the parents. Justice Elena Kagan wrote that parents do not always have to exhaust IDEA procedures whenever they initiate a lawsuit concerning a disabled child. Rather, there must be consideration as to the context of the claim, and whether the dispute centers on the IDEA's guarantee of a "free appropriate public education" (FAPE). Justice Kagan wrote that the IDEA exhaustion requirements do not apply when the "gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee." The Court then remanded the matter to establish the history of the proceedings, and determine whether the parents initially pursued the IDEA's administrative remedies prior to filing suit.

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The Court's ruling in *Fry v. Napoleon Community Schools* may have a significant effect on how future disputes concerning disabled students are litigated. Parents may be inclined to base their claims under Section 504 and the ADA, and bypass the procedural safeguards in the IDEA. This allows parents greater breadth in the amount of relief they can seek, and more flexibility in how it is litigated. Conversely, schools must be diligent in assuring that FAPE based claims remain in the IDEA sphere.

The Special Education Group will continue to monitor these developments and keep you informed.

