

Exhausted?

A Discussion of the Impact of Perez v. Sturgis

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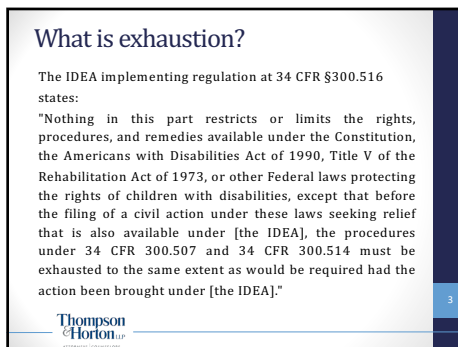
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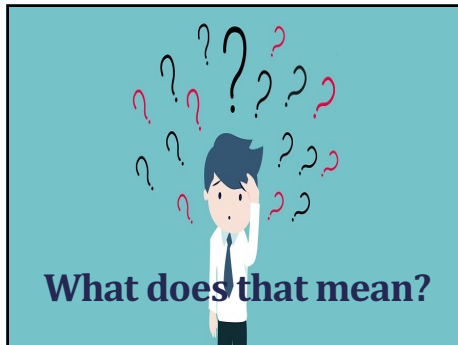
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What is exhaustion?

- Generally, parents must go through the IDEA administrative hearing process before seeking relief in federal court.
- This rule can apply even if the party is suing under a different statute, such as Section 504 or the ADA.
- If a lawsuit alleges a denial of FAPE under any statute, relief must first be sought in an IDEA administrative hearing.

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What is exhaustion?

- Filing of a due process complaint is only part of the exhaustion requirement.
- Parents suing a district for an alleged denial of FAPE must also show:
 - A hearing officer issued a final ruling; and
 - The district was a party to that complaint.
- Dismissal of a complaint on procedural grounds is not enough to satisfy the exhaustion requirements. Only when a final decision on the merits is obtained can the party seek relief in court.

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Why does it matter?

- The idea behind exhaustion is that it prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been pursued as fully as possible in the original one.
- "The exhaustion doctrine recognizes the notion . . . that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992).

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Why does it matter?

- Administrative review
 - Allows for the exercise of discretion and educational expertise by state and local agencies;
 - Affords full exploration of technical educational issues;
 - Furthers development of a complete factual record; and
 - Promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs.

Polera v. Bd. Of Educ., 228 F.3d 478, 487 (2d Cir. 2002)

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Fry v. Napoleon Community Schools

- In *Fry*, the student, E.F., had a severe form of cerebral palsy. E.F. had a trained service dog, Wonder.
- Parents sought permission for Wonder to join E.F. in Kindergarten and district officials refused. Instead, E.F.'s IEP called for a human aide to provide the student support.
- Parents removed E.F. and began homeschooling.
- Parents filed suit against the district in federal court alleging violations of ADA and 504 by denying E.F. equal access and refusing to reasonably accommodate.

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Fry v. Napoleon Community Schools

- The Frys sought a declaration that the school had violated the ADA and 504, along with money damages to compensate for E.F.'s injuries.
- The district court dismissed the lawsuit on the basis that the Frys failed to exhaust IDEA administrative remedies. The 6th Circuit upheld the dismissal.
- The Supreme Court disagreed and found that if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required. Even if the suit arises directly from a school's treatment of a child with a disability.

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Fry v. Napoleon Community Schools

- The Supreme Court held that exhaustion is unnecessary where the essence ("gravamen") of the plaintiff's suit is "something other than the denial of the IDEA's core guarantee of a FAPE."
- In determining whether the substance of the complaint concerns a denial of FAPE or instead addresses disability-based discrimination, the Court identified two hypothetical questions to ask.

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Fry v. Napoleon Community Schools

1. Whether the student could assert the same claim against a noneducational public facility (e.g., a public library); and
2. Whether an individual other than a student could assert the same claim against the district.

If the answer to both questions is **YES**, the claim likely does not relate to FAPE and exhaustion is likely not required. But when the answer is **NO**, then the complaint probably does concern a FAPE, even if it does not explicitly say so.

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Fry v. Napoleon Community Schools

- The Court found the Frys' complaint alleged only disability-based discrimination without making any reference to the adequacy of special education services, and nothing in the nature of the Frys' suit suggested any implicit focus on the adequacy of E.F.'s education.
- The Court did not address the parents' alternative argument that the IDEA's exhaustion provision does not apply to claims seeking money damages or other relief that is unavailable under the statute.

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Interpretations of *Fry* by the 5th Circuit

- In *T.B. v. Northwest Indep. Sch. Dist.*, the court stated that although a parent did not mention her child's educational services in her complaint, her Section 504 and ADA claims centered around a denial of FAPE. The Court reasoned that the parent had previously filed a due process complaint on the same issue.
- In *W.S. v. Dallas Indep. Sch. Dist.*, the court held that a Texas district that allegedly failed to supervise a middle schooler with Down syndrome and autism to prevent him from ingesting non-food objects did not have to defend a disability discrimination lawsuit for injuries the student suffered after he swallowed six rubber gloves.

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Interpretations of *Fry* by the 5th Circuit

- In *McMillen v. New Caney Indep. Sch. Dist.*, (5th Cir. 2019), the fact that a teen with autism and an emotional disturbance only sought money damages as a remedy for his expulsion from a Texas district did not allow him to bypass administrative procedures.
 - Notably, other circuit courts had ruled differently on this issue.

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The US Supreme Court weighs in . . . Again



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Perez v. Sturgis Public Schools

- Involved a deaf student who spent years with an aide who did not know ASL.
- Student and parents claimed the district misrepresented the aide's qualifications and that those qualifications came to light when the student was not eligible for graduation.
- Claimed student went years without making genuine progress and his ability to communicate suffered as a result.
- District and parents settled the IDEA claims. Settlement agreement included a release of IDEA claims only.

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Perez v. Sturgis Public Schools

- Student/parents then sued district for discrimination under the ADA based on the same facts.
- The district court dismissed the case finding the plaintiff had settled the case and, therefore, had failed to exhaust administrative remedies under IDEA (i.e., failed to go to hearing and get a decision on the merits).
- 6th Circuit Court of Appeals agreed and upheld the dismissal. Plaintiffs appealed to the Supreme Court.

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Perez v. Sturgis Public Schools

- The district argued that 20 USC 1415(l) barred the student from bringing his ADA claim because it requires a plaintiff "seeking relief that is also available under" the IDEA to first exhaust his administrative remedies under the IDEA.
- The US Supreme Court reversed and ruled that the IDEA's exhaustion requirement did not preclude the parent/ student from bringing an ADA lawsuit seeking monetary damages.
- According to the Court, monetary damages are a type of relief not available under IDEA; therefore, the parent/student need not first satisfy the IDEA's exhaustion requirement.

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Perez v. Sturgis Public Schools

- *Perez* seemingly applies to lawsuits under other federal laws, such as Section 504, where the parent seeks monetary damages as relief.
- The Supreme Court in *Perez* noted that the statute's administrative exhaustion requirement **applies only to suits that "see[k] relief . . . also available under" IDEA.** And that condition simply is not met in situations like ours, where a plaintiff brings a suit under another federal law for compensatory damages – a form of relief everyone agrees IDEA does not provide."

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Perez v. Sturgis Public Schools

- In responding to the district's argument that *Fry* required exhaustion in this case, the Court stated, "[t]his case presents an analogous but different question--whether a suit admittedly premised on the past denial of a free and appropriate education may nonetheless proceed without exhausting IDEA's administrative processes if the remedy a plaintiff seeks is not one IDEA provides. In both cases, the question is whether a plaintiff must exhaust administrative processes under IDEA that cannot supply what he seeks. And here, as in *Fry*, we answer in the negative."

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Perez v. Sturgis Public Schools

- The Court did not preclude the possibility that other remedies sought in a suit may still be subject to the exhaustion requirement. "[A] plaintiff who files an ADA action seeking both damages and the sort of equitable relief IDEA provides may find his request for equitable relief barred or deferred if he has yet to exhaust [IDEA remedies]."

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Chavez v. Brownsville ISD

- Claims arose out of a paraprofessional's alleged misconduct. Student was injured while in the care of the paraprofessional. Parent filed a request for due process alleging denial of FAPE.
- BISD and Chavez settled the IDEA case. The settlement agreement included a release of all claims under the IDEA.
- Over a year later, Chavez filed suit in federal court alleging violations of the 14th Amendment and ADA. Chavez sought compensatory damages, equitable relief to enjoin BISD, and attorney's fees.

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Chavez v. Brownsville ISD

- District court ruled that parent had failed to exhaust under the IDEA so parent could not bring her ADA and 14th Amendment claims. Chavez appealed the decision.
- In June 2023, the 5th Circuit found that the *Perez* decision – issued after the district court ruling - allowed the parent to pursue her claims for compensatory damages.
- According to the 5th Circuit, the district court's application of IDEA's exhaustion requirement to Chavez's claims seeking compensatory damages conflicts with *Perez*.

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Chavez v. Brownsville ISD

- The 5th Circuit found, however, that the same was not true for Chavez's claim for equitable relief and found the district court's application of the IDEA's exhaustion requirement to the requests for equitable relief not affected by *Perez*.
- What does this tell us?
 - In the 5th Circuit, courts will continue to apply the exhaustion requirements to lawsuits – or portions of lawsuits – that seek the type of remedies available under the IDEA. But will allow for lawsuits – or portions of lawsuits – seeking compensatory damages to continue without the need to pursue an IDEA hearing.

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Possible Impacts

- Rise in federal litigation.
- Attempts to bypass administrative remedies under IDEA by seeking money damages.
- Plaintiffs may proceed under both IDEA and ADA/504 simultaneously.
- Consider and address potential Section 504 and ADA claims in settlement discussions and agreements. If possible, secure a release for all claims.

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ADA/504 Claims in Federal Court

- A direct path to the courthouse does not necessarily make it easier for a parent to recover damages.
- *Perez* only addresses the right to pursue a claim, but it does not change the standard of proof necessary.
- Allegations of discrimination under ADA or 504 and suits seeking monetary damages will still have to establish some form of intentional discrimination to prevail.

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ADA/504 Claims in Federal Court


- In the context of educational services for students with disabilities, the prevailing judicial opinion is that a showing of bad faith or gross misjudgment on the part of school officials is necessary to succeed on a 504 or ADA judicial claim.
- *DA v. Houston Indep. Sch. Dist.*, 55 IDELR 243 (5th Cir. 2010) (explaining that to state a viable intentional discrimination claim under Section 504 when the claim is predicated on disagreement over compliance with the IDEA, a plaintiff must show officials acted in bad faith or departed grossly from accepted professional standards).
- *Estrada v. San Antonio Indep. Sch. Dist.*, 63 IDELR 213 (5th Cir. 2014) (holding that a student seeking relief under ADA Title II for a district's failure to accommodate his disability must show the district acted in bad faith or with gross misjudgment).

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THANK YOU!

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