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## ADA Claim Arising from Alleged Denial of FAPE Requires Exhaustion of Administrative Process

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**Written by:**

Jennifer Baldassari

Partner

Walnut Creek

Bailey M. Hughes

Associate

Monterey

The recent en banc opinion of the U.S. Court of Appeals for the Ninth Circuit, *D.D. v. Los Angeles Unified School District* (9th Cir. 2021) 18 F.4th 1043, addresses the issue of whether a plaintiff asserting a claim in federal court under the Americans with Disabilities Act (ADA) must first pursue available administrative remedies under the Individuals with Disabilities Education Act (IDEA). Applying the United States Supreme Court's decision in *Fry v. Napoleon Cmty. Schs.* (2017) 580 U.S. \_\_\_ [137 S.Ct. 743], the Ninth Circuit held that when the core of a judicial complaint alleges a denial of a Free Appropriate Public Education (FAPE) under the IDEA, the plaintiff must exhaust the IDEA administrative process before seeking relief in court under the ADA or Section 504 of the Rehabilitation Act of 1973 (Section 504), including through a final decision resulting from a special education administrative due process hearing.

### Background

Parents of an elementary student who suffered from an emotional disability filed a due process complaint in March 2018 alleging a denial of FAPE under the IDEA by failing to provide the child with a one-to-one behavioral aide. The parties proceeded to mediation and settled all claims related to or arising from the child's educational program. The settlement did not include claims for damages under the ADA.

Nine months after settlement of the IDEA/FAPE claims, the parents pursued an ADA claim alleging the same facts as the IDEA complaint, seeking to obtain damages that are otherwise unavailable under the IDEA. The trial court dismissed the ADA case, finding the parents failed to exhaust administrative remedies under the IDEA, as no administrative hearing had taken place. This dismissal prompted parents to file an appeal to the Ninth Circuit.

### Appeal to Ninth Circuit

On appeal, through a 2-1 ruling by the Ninth Circuit panel, the Court held the plaintiff parents were not required to exhaust IDEA administrative remedies before pursuing the ADA damages claim in their federal court complaint. Thereafter, this initial ruling was vacated so that the case could be heard en banc, by a larger cross-section of Ninth Circuit judges. The en banc court rejected the plaintiff parents' argument that they

were not required to exhaust the IDEA administrative process because the complaint requested compensatory money damages for emotional distress, which is a type of relief not available under the IDEA. The Ninth Circuit reasoned that the specific relief sought is not enough to circumvent the administrative process. The Ninth Circuit highlighted that this case was “entirely about timing,” meaning that the plaintiff was permitted to sue the school district under both IDEA and ADA using the same facts, but an ADA claim must independently exhaust administrative remedies when the “gravamen of the complaint seeks redress for a school’s failure to provide a FAPE, even if not phrased or framed precisely that way[.]”

To determine whether the plaintiff’s claims were based on a denial of FAPE, the Ninth Circuit relied on Supreme Court precedent in *Fry v. Napoleon Cmty. Schs.*. The *Fry* decision outlined factors for determining whether a claim was squarely brought under the ADA, including whether the claims could be brought by an individual if they occurred at a public facility, outside of the school context, or whether an adult at the school could have brought an analogous claim. The Court of Appeals also considered whether the plaintiff had previously brought a complaint under the IDEA. Applying these considerations to the *D.D.* case, the Ninth Circuit determined the crux of the claims was not ADA-based, but was instead centered around the alleged denial of FAPE, resulting in the plaintiff being required to exhaust administrative remedies before seeking relief in court.

## Takeaways

A plaintiff seeking relief under the ADA or Section 504 based upon allegations that they were denied a FAPE must first pursue relief available under the IDEA’s administrative procedures. If a school district is faced with a lawsuit brought on behalf of a student that at its core alleges a denial of FAPE, the district should evaluate whether the plaintiff has exhausted the administrative process. The Ninth Circuit notably declined to rule on whether settling issues regarding a violation of FAPE would exhaust the administrative process, leaving in place the existing Ninth Circuit holding in *Paul G. v. Monterey Peninsula Unified School District*, (9th Cir. 2019) 933 F.3d 1096.

If you would like more information about this case, or to discuss the administrative process under IDEA, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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