CLIENT NEWS BRIEF

In Service Dog Case, Supreme Court Holds that IDEA Procedures Need Not Be Exhausted if Complaint not Related to Denial of FAPE

February 2017
Number 10

On February 22, 2017, the United States Supreme Court issued a unanimous decision in *Fry v. Napoleon Community Schools* (2017) 580 U.S. ___ (*Fry*) that is expected to have a profound effect on the way lawsuits that arise under the Individuals with Disabilities Education Act (IDEA), Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) are litigated. The Court held that students with a disabilities are not required to exhaust the administrative remedies available to them under the IDEA prior to filing a federal district court case. The Court remanded this case for a determination of whether of the student's claims arose under the ADA and Section 504 and were related to disability discrimination, or whether the claims might have arisen under the IDEA for the school district's offer or provision of a free appropriate public education (FAPE).

The plaintiff in *Fry* is a child with a severe form of cerebral palsy who is assisted by a trained service dog in her various daily life activities. When the child entered kindergarten, her parents sought permission from her Michigan school district for the dog, "Wonder," to accompany the child to school. The district refused the request, saying that because the child received human aide support pursuant to her Individualized Education Program (IEP), the presence of the service dog was unnecessary. In response to the decision, the child's parents removed her from the school and began homeschooling her.

The child's parents filed a complaint with the Department of Education's Office for Civil Rights (OCR) alleging that the school district's exclusion of the service dog constituted unlawful disability discrimination under the ADA and Section 504. OCR agreed and found that the school district's exclusion of the animal constituted discrimination based on disability, and the child was invited to return to school with her service dog. However, the child's parents instead enrolled her in a different school over fears of resentment from school officials. The child's family then filed suit in federal court alleging solely disability-based discrimination under the ADA and Section 504. The family sought declaratory and monetary relief.

At the district court level (and as affirmed by the U.S. Court of Appeals for the Sixth Circuit), the family's suit was dismissed on the basis that the IDEA requires a plaintiff bringing suit under the ADA and Section 504, and seeking relief that is also available under the IDEA, to "first exhaust the IDEA's administrative procedures." The Supreme Court vacated and remanded the decision to the Court of Appeals for a determination of whether plaintiff was actually claiming that she was denied a FAPE under the IDEA.

Previously, courts have held that where a plaintiff seeks relief that is available to them under the IDEA for a denial of FAPE, regardless of whether their particular claims arise under the IDEA, ADA or Section 504, the plaintiff must first exhaust the administrative remedies available under the IDEA. However here, where the plaintiff's complaint alleged only disability-based discrimination – without any reference to the adequacy of her special education program – the Supreme Court found that administrative exhaustion


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requirement may not apply and remanded the case for adjudication under this standard.

The Court noted that in cases utilizing "artful pleading" to allege a denial of FAPE without phrasing it as such to avoid the IDEA exhaustion requirement, the essence of the case determines whether the complaint is subject to the exhaustion requirement. Two questions must be asked about a complaint that neither alleges only a denial of FAPE under the IDEA or discrimination in violation of the ADA and Section 504: (1) could the plaintiff have brought the same claim if the alleged misconduct had occurred at a public facility that is not a school and (2) could an adult at the same school have pursued essentially the same grievance?

If the answer to both questions is "yes," unless the complaint expressly alleges a denial of FAPE, the cause of action is also unlikely to involve an alleged denial of FAPE under the IDEA. When the answer to these questions is "no," the complaint more likely concerns a student's receipt of FAPE, and is therefore subject to the exhaustion requirement. The history of the proceedings is also indicative of the essence of the complaint in the sense that, if the plaintiff previously pursued FAPE claims under the IDEA, this is "strong evidence" that the substance of the complaint truly concerns a denial of FAPE. The Supreme Court remanded the case back to the Court of Appeals, instructing the court to determine whether the family had invoked the IDEA dispute resolution procedures prior to filing suit.

It comes as no surprise that the concurring justices expressed concern that this standard would add to the confusion surrounding the IDEA exhaustion requirement. Nonetheless, the *Fry* decision seems to continue the judicial narrowing of the IDEA's exhaustion requirement. In a similar case, the Ninth Circuit Court of Appeals held that the IDEA exhaustion requirement did not apply where a student sought only monetary damages under Section 1983 of the Civil Rights Act. (See *Payne v. Peninsula School District* (9th Cir. 2011) 653 F.3d 863.) Taken together, these cases may create a more direct path for student plaintiffs to federal court on civil rights claims and those arising under the ADA and Section 504.

For more information on the *Fry* decision and its impact on IDEA, ADA and Section 504 claims, please contact an attorney in our Special Education Practice Group or at one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter or download our Client News Brief App.