
Ninth Circuit Contemplates Whether an ADA Claim Arising from Alleged Denial of FAPE Requires Exhaustion of Administrative Process

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Back in November of 2021, the U.S. Court of Appeals for the Ninth Circuit, sitting en banc in deciding *D.D. v. Los Angeles Unified School District* (9th Cir. 2021) 18 F.4th 1043, addressed 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). In that opinion, the Ninth Circuit applied the United States Supreme Court's decision in *Fry v. Napoleon Community Schools* (2017) 580 U.S. 154, in holding that when the core of a 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). See our [2022 Client News Brief Number 2](#).

On April 3, 2023, the Ninth Circuit's opinion in *D.D. v. Los Angeles Unified School District* was vacated in light of the Supreme Court's recent holding in *Perez v. Sturgis Public Schools* (2023) ___ U.S. ___ [143 S.Ct. 859]. See our [2023 Client News Brief Number 19](#) discussing the outcome of the *Perez* case for your reference. The Ninth Circuit anticipates issuing a new judgment regarding *D.D. v. Los Angeles Unified School District*. We will be on the lookout for the Ninth Circuit's new decision on remand in *D.D. v. Los Angeles Unified School District* and will provide an update at that time.

Background

Parents of an elementary student who suffered from an emotional disability filed a due process complaint in March 2018 alleging the school district denied their child a 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 and seeking damages that are otherwise unavailable under the IDEA. The trial court dismissed the ADA case, finding the parents failed to exhaust administrative remedies available 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, the Ninth Circuit panel held the plaintiff parents were not required to exhaust IDEA administrative remedies before pursuing the ADA damages claim in their federal 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[.]" At this time, the Ninth Circuit's opinion is being called into question again due to the Supreme Court's holding in *Perez v. Sturgis Public Schools*.

In the judgment now vacated, the Ninth Circuit relied on Supreme Court precedent in *Fry v. Napoleon Community Schools* to determine whether the plaintiff's claims were based on a denial of FAPE. 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 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 that 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. However, this administrative exhaustion has now been challenged and may no longer be a required part of the process in some circumstances.

Takeaways

Presently, we are awaiting guidance from the Ninth Circuit as they further consider the decision in *D.D. v. Los Angeles Unified School District* in view of *Perez v. Sturgis Public Schools*. Until the court issues a new decision in *D.D.*, it is unclear whether 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. Notably, the Ninth Circuit previously has declined to rule on whether settling issues regarding a violation of FAPE would exhaust the administrative process.

If you would like more information about this case or 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 [podcast](#), follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).

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