

LEGAL UPDATE!!

United States Supreme Court Weighs in on Exhaustion of Administrative Remedies Under IDEA

On March 21, 2023, the U.S. Supreme Court issued a decision in the [Perez v. Sturgis Public Schools](#) case. The Court held that the IDEA's requirement for exhaustion of administrative remedies **does not** apply to federal claims when the relief sought is not something IDEA can provide. This unanimous decision ruled that parents of students with disabilities who are seeking money damages for disability discrimination under Title II of the ADA or Section 504 of the Rehabilitation Act of 1973 may do so without first filing for a special education due process hearing, even if the claim is one of a denial of a Free Appropriate Public Education (FAPE).

What does it mean to exhaust administrative remedies? Under IDEA, before a parent of a student with disability can seek relief from other Federal laws which protect students with disabilities, parents must pursue as fully as possible (exhaust) the remedies available through a special education due process hearing, so long as the relief the parent seeks is available under IDEA and the other Federal law. [34 C.F.R. § 300.516 \(e\)](#).

How does the Perez decision change exhaustion? While IDEA can provide students with financial relief for educational support (i.e., compensatory education, tuition reimbursement, Independent Educational Evaluations), IDEA does not allow personal money damages as a relief for disability discrimination or a denial of a FAPE. In this decision, the U.S. Supreme Court found that parents of students with disabilities are not required to file for or complete a special education due process hearing prior to filing a civil action under other Federal laws when seeking personal money damages, because personal money damages is something IDEA cannot provide. For parents to be successful in obtaining relief of money damages in ADA and or Section 504 claims, they must prove that the school "intentionally" discriminated against the student when it failed to provide FAPE. This is a high standard.

How does this decision affect schools? With this decision, schools may see an increase in federal lawsuits in conjunction with the special education due process hearing requests when there is a claim of a denial of FAPE and or disability discrimination. Schools will also want to address potential ADA and Section 504 claims when entering into agreements that settle special education litigation. This could potentially drive up the financial payout to parents to secure a release of all claims under ADA and Section 504.

Most importantly, this decision **will not** change how you serve students with disabilities day-to-day. Schools will want to continue to develop and implement IEP's to enable students with disabilities to make progress appropriate in light of their circumstances. [Andrew F. v. Douglas County School District RE-1](#), March 2017. Staff training is always your best course of action.

EX-SELS is here to help with your training needs. Call: 505-219-5345 or email me at lgerkey@ex-sels.com

This Legal Update was prepared by EX-SELS attorney, Lorie A Gerkey, Esq., and is provided as a benefit to our clients. This email is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.