


2023 WASN ANNUAL CONFERENCE

Green Bay, Wisconsin
April 27, 2023

Presented by: Attorneys Mary S. Gerbig
and Aleah M. Loll



Buelow Vetter
Buikema Olson & Vliet, LLC



**PART ONE:
LEGAL UPDATES: NEW
DEVELOPMENTS FOR SCHOOL
NURSING**

IDEA, TITLE II (ADA), AND THE EXHAUSTION REQUIREMENT

Federal Statutes

- The Individuals with Disabilities Education Act (IDEA) offers federal funds to States in exchange for a commitment to furnish a “free appropriate public education” (FAPE) to children with certain disabilities, 20 U. S. C. §1412(a)(1)(A), and establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE.

IDEA, ADA, AND THE EXHAUSTION REQUIREMENT

Federal Statutes

- Other federal statutes also protect the interests of children with disabilities, including Title II of the Americans with Disabilities Act (ADA) and §504 of the Rehabilitation Act. In *Smith v. Robinson*, 468 U. S. 992 , the Supreme Court considered the interaction between those other laws and the IDEA, holding that the IDEA was “the exclusive avenue” through which a child with a disability could challenge the adequacy of his education. *Id.*, at 1009.

IDEA, ADA, AND THE EXHAUSTION REQUIREMENT

Federal Statutes

- Congress responded by passing the Handicapped Children's Protection Act of 1986, overturning Smith's preclusion of non-IDEA claims and adding a carefully defined exhaustion provision. Under that provision, a plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws "seeking relief that is also available under [the IDEA]" must first exhaust the IDEA's administrative procedures. §1415(l).

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Background

- Petitioner E. F. was a child with a severe form of cerebral palsy; a trained service dog named Wonder assisted her with various daily life activities.
- When E. F.'s parents, petitioners, Stacy and Brent Fry, sought permission for Wonder to join E. F. in kindergarten, officials at Ezra Eby Elementary School refused.

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Background

- The officials reasoned that the human aide provided as part of E. F.'s individualized education program rendered the dog superfluous. In response, the Frys removed E. F. from Ezra Eby and began homeschooling her.
- They also filed a complaint with the Department of Education's Office for Civil Rights (OCR), claiming that the exclusion of E. F.'s service animal violated her rights under Title II and §504. OCR agreed, and school officials invited E. F. to return to Ezra Eby with Wonder.

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Background

- But the Frys, concerned about resentment from school officials, instead enrolled E. F. in a different school that welcomed the service dog.
- The Frys then filed suit in federal court against Ezra Eby's local and regional school districts and principal (collectively, the school districts), alleging that they violated Title II and §504 and seeking declaratory and monetary relief.

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Holdings

- Exhaustion of the IDEA's administrative procedures is unnecessary where the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee of a FAPE.
- The language of §1415(l) compels exhaustion when a plaintiff seeks "relief" that is "available" under the IDEA. Establishing the scope of §1415(l), then, requires identifying the circumstances in which the IDEA enables a person to obtain redress or access a benefit. That inquiry immediately reveals the primacy of a FAPE in the statutory scheme.

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Holdings

- Even if a school district's denial of a particular disability related accommodation has some connection to the student's education, the parents are not required to exhaust their administrative remedies first.
- The Supreme Court held that parents are not required to exhaust administrative remedies under the IDEA, in this case.
- The Court did not address the substantive issue of whether excluding a service dog amounts to discrimination under Section 504 or ADA.

FRY V. NAPOLEON COMMUNITY SCHOOLS, FEB. 22, 2017

Holdings

- The IDEA exhaustion requirement applies only when the essence of the complaint alleges a denial of a free appropriate public education (FAPE).
- IDEA law requires exhaustion when a parent seeks relief that is available under the statute, and concerns whether a child is receiving FAPE.

PEREZ V. STURGIS PUBLIC SCHOOLS, MARCH 21, 2023

Background

- Perez was a 23-year-old deaf student attending school in Michigan. The school failed to provide Perez with a qualified interpreter and misrepresented his educational progress. As a result, the school did not allow him to graduate.
- Perez alleged that he was denied a FAPE and filed a complaint with the Michigan Department of Education based on violations of the IDEA, ADA, Rehabilitation Act, and state disabilities laws.
- Perez and the school settled the case before a hearing was held before the Administrative Law Judge.

PEREZ V. STURGIS PUBLIC SCHOOLS, MARCH 21, 2023

Background

- Perez filed suit in federal court on the ADA claim and a state law claim. Perez was seeking compensatory (money) damages for the emotional distress he endured.
- The District Court dismissed his claims for failing to exhaust the administrative procedures required by the IDEA because he settled his claims with the school before the claims were adjudicated.
- This decision was affirmed by the U.S. Court of Appeals for the Sixth Circuit, reasoning that there was no administrative decision by the state to determine if Perez was denied a FAPE.

PEREZ V. STURGIS PUBLIC SCHOOLS, MARCH 21, 2023

Background

- U.S. Supreme Court granted review of the case and heard oral arguments on January 18, 2023.
- Questions presented to the Court:
 - In what circumstances exhaustion of administrative remedies under IDEA should not be required when proceedings become futile; and
 - Whether the exhaustion requirement in 20 U.S.C. Section 1415(l) requires exhaustion for a non-IDEA claim seeking compensatory damages that are unavailable under the IDEA.

PEREZ V. STURGIS PUBLIC SCHOOLS, MARCH 21, 2023

Holdings

- The exhaustion requirement only applies to suits that seek relief also available under the IDEA.
- Perez was not required to exhaust IDEA's administrative processes because he was seeking compensatory damages that are not available under the IDEA.
- The Court's decision in *Fry* did not preclude Perez from seeking relief in federal court because *Fry* did not address the question of whether a plaintiff must exhaust IDEA's administrative processes when the relief sought is unavailable under IDEA.

PEREZ V. STURGIS PUBLIC SCHOOLS, MARCH 21, 2023

Holdings

- The exhaustion requirement only applies to suits that seek relief also available under the IDEA.
- Perez was not required to exhaust IDEA's administrative processes because he was seeking compensatory damages that are not available under the IDEA.
- The Court's decision in *Fry* did not preclude Perez from seeking relief in federal court because *Fry* did not address the question of whether a plaintiff must exhaust IDEA's administrative processes when the relief sought is unavailable under IDEA.

WHY DO WE CARE ABOUT *FRY* AND *PEREZ*?

- School health services may be needed to ensure that students receive an appropriate education (FAPE).
- All students covered by the IDEA also receive Section 504 protections. Section 504 covers a much broader group of students. Therefore, even if a student does not qualify under the IDEA, health services may still be required through a 504 plan. There may be a correlation with health plans and emergency services.
- Failure to consider if a student needs services under a 504 plan could lead to a denial of a FAPE.
- A student denied a FAPE under Section 504 or other federal statutes could seek relief in federal court.

MEDICATION POLICIES

Best Practices

- Schools are required to have a written policy that governs the administration of prescription and nonprescription drugs. Nurses must assist in policy development.
- Identify the terms for administering prescription and nonprescription drugs. Consider what information parents and practitioners need to provide to the school, including how medications should be packaged and labeled.
- Obtain the proper consent for administering prescription and nonprescription medications. Consent forms could be available to parents at the beginning of the school year or online.

MEDICATION POLICIES

Best Practices (Cont.)

- Under Wis. Stat. § 118.29(4), your policy must contain information regarding the following:
 - Storage of medications, including who is responsible for managing medications and where medications will be kept.
 - Record keeping, including proper documentation for the administration of medications and any errors that occur.
 - The procedures for obtaining and filing in the school the written instructions and consent required for administering medications.
 - Periodic review of written instructions by a registered nurse.

MEDICATION POLICIES

Best Practices (Cont.)

- Other information to consider including in your policy:
 - Stocking medications in case of emergencies. Stock medications are not required under state law.
 - Specify which school personnel are allowed to access and administer medications.
 - In some policies, medication administration is not a delegated nursing act.
 - A plan for the management of pupils attending the school who have life-threatening allergies if adopted by the school board.

EMERGENCY NURSING SERVICES

Standard G

- Requires that emergency nursing policies dealing with illness management, accidental injury, and medication administration be implemented during school and at all school-sponsored activities.

School Sponsored Activities

- Any activity that is school-based or school-sponsored is considered a curricular or extracurricular activity. The activity could take place before or after the school day, as well as on the weekends.
- Examples:
 - Field trips (in-state and out-of-state)
 - Summer school
 - Participation in sports (practices and events)
 - School clubs



WRAP-UP AND QUESTIONS