

## U.S. Supreme Court Approves Lawsuits Seeking Money Damages for Alleged Denials of FAPE

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Last month, the United States Supreme Court issued a unanimous decision in *Perez v. Sturgis Public Schools*, 598 U.S. \_\_\_, 143 S. Ct. 859 (2023), a case involving a claim that the school district at issue failed to provide a deaf student a free appropriate public education (FAPE) by utilizing unqualified interpreters and misrepresenting his educational progress. After settling certain claims, the plaintiffs filed a lawsuit in federal court seeking monetary damages under the Americans with Disabilities Act (ADA). *Perez* addressed the question of whether the plaintiffs were first required to exhaust, *i.e.* pursue all, administrative remedies available under the Individuals with Disabilities Education Act (IDEA) before filing their ADA claim.

In answering this question, the Supreme Court held that plaintiffs who seek *remedies* that are unavailable under the IDEA are not required to exhaust their administrative remedies before filing a lawsuit under federal nondiscrimination laws such as the ADA or Section 504 of the Rehabilitation Act. In other words, if a plaintiff seeks only monetary damages (which are not available under the IDEA), the plaintiff is not required to first pursue an administrative due process hearing, even if the basis of the plaintiff's claim is that the school district denied the student at issue a FAPE under the IDEA's provisions.

This is a shift from the Supreme Court's previous decision in *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017). In *Fry*, the Court held that administrative exhaustion under the IDEA was required "when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE." Thus, under prior law, whether exhaustion was required turned on whether the plaintiff was raising claims alleging a denial of a FAPE. *Perez* shifts this analysis to look instead at whether the particular relief or remedy the plaintiff is seeking is available under the IDEA. If yes, exhaustion is required. If no, it is not.

The *Perez* decision thus opens the door for plaintiffs to file directly a lawsuit for monetary damages, even if that lawsuit involves claims that a school district denied the student a FAPE under the IDEA as part of their claims. If, however, plaintiffs seek remedies available under the IDEA (*e.g.*, claims for reimbursement for private placement or services, compensatory education services or claims for changes to a student's educational program, etc.), they are still required to first seek administrative relief through an IDEA's due process hearing.

We are available to help answer any questions regarding *Perez* and its implications. Please contact one of the partners on our special education team for further assistance.

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