

Exhaustion of Administrative Remedies in Special Education Matters

On March 21, 2023, the United States Supreme Court issued its decision in Perez v. Sturgis Public Schools, which raised the question of whether a plaintiff seeking relief that is also available under the Individuals with Disabilities Education Act (“IDEA”) must exhaust administrative remedies prior to seeking money damages in court. The Supreme Court unanimously held that the IDEA’s exhaustion requirement did not preclude the plaintiff from bringing a lawsuit under the Americans with Disabilities Act (“ADA”), because the relief sought – compensatory damages – was not a type of remedy that the IDEA can provide. New Jersey school districts should be aware of the impact of the Perez decision on special education litigation, particularly in matters involving claims for compensatory money damages, such as damages for emotional distress, lost income, or medical bills incurred based on the alleged conduct of the school district and its staff, as opposed to equitable relief, such as compensatory education services.

Students alleging disability discrimination against school districts often seek to bring claims for money damages under the ADA, Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. §1983, and/or the New Jersey Law Against Discrimination (“NJLAD”), in addition to, or in lieu of, the IDEA. Although these laws and the IDEA all offer protections to a student with a disability, they have different legislative purposes and are focused on different types of harm. The ADA, Section 504, and the NJLAD are intended to prohibit disability-based discrimination, while the goal of the IDEA is to provide meaningful access to education for children with disabilities by offering individualized instruction and related services appropriate to their unique needs. In addition, a §1983 claim may offer a remedy for the violation of the constitutional rights of a student with a disability, such as alleged physical abuse of a student by a school staff member.

In New Jersey, administrative remedies are available in a special education matter by filing a request for a due process hearing with the New Jersey Department of Education, Office of Special Education Programs (“OSEP”), which will transmit the request to the Office of Administrative Law (“OAL”) for a hearing if a voluntary resolution cannot be reached. Because money damages are not available in a due process hearing pursuant to the IDEA, a party seeking this type of remedy must pursue a lawsuit in State or federal court. Prior to the Perez decision, such a lawsuit would only be permitted if the plaintiff had previously exhausted all administrative remedies available under the IDEA, by filing a due process request and either proceeding to a hearing or resolving the matter by way of a voluntary settlement. However, as a result of Perez, it appears that students with disabilities and their families who seek to bring a money damages claim pursuant to State or federal laws other than the IDEA may now be permitted to bypass OSEP and OAL, and proceed directly to filing a lawsuit in federal court if they are seeking relief that is not available under the IDEA, such as compensatory damages.

The Perez Case: Factual and Procedural History

The plaintiffs in Perez were a deaf adult student and his parents who had filed a lawsuit in federal district court asserting claims and seeking compensatory money damages under the ADA, claiming that the Sturgis Public School District (“District”) had failed to offer a free,

appropriate public education (“FAPE”). These claims for damages were based upon the plaintiffs’ factual allegations that the District had provided unqualified interpreters, inappropriately denied Mr. Perez interpreters in the classroom for substantial periods of time, and misrepresented his educational progress, awarding inflated grades and advancing him from grade to grade regardless of his progress. The lawsuit was filed after Mr. Perez and his family filed a complaint with the Michigan Department of Education, raising claims under the IDEA and other laws, which resulted in a settlement shortly prior to an administrative hearing.

The District filed a motion to dismiss, arguing that the IDEA prohibits a plaintiff from bringing an ADA claim without first exhausting the administrative procedures and remedies available under the IDEA. The federal district court agreed and granted the motion to dismiss, and the Sixth Circuit Court of Appeals affirmed, based upon Sixth Circuit precedent supporting the District’s argument. The Supreme Court granted certiorari because the federal courts of appeals had issued inconsistent rulings in cases that required interpretation of the provision contained in the IDEA regarding the exhaustion of administrative remedies.

Specifically, the relevant provision of the IDEA, 20 U.S.C. §1415(l), states as follows:

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

The Court held that the IDEA does not require a plaintiff to exhaust the administrative processes described in the IDEA where the plaintiff is not seeking a remedy that the IDEA could provide, such as money damages. In reaching this holding, the Court emphasized that the IDEA should not be interpreted to restrict or limit “remedies” available under other laws, including the ADA. The word “remedy,” in this context, is defined as “the means of enforcing a right,” such as money damages under the ADA.

With regard to the phrase “seeking relief that is also available” under the IDEA, the Court agreed with Mr. Perez’s argument that this language would be applicable only if he were pursuing a remedy that the IDEA could also offer, and because his lawsuit sought compensatory money damages, it did not apply in his case. Therefore, Mr. Perez was not obligated to exhaust the administrative procedures and remedies available to him under the IDEA before filing his ADA claims seeking money damages in federal court. The Perez decision concluded by noting that although the lower courts had held that §1415(l) precluded Mr. Perez’s ADA lawsuit, the Court sought to “clarify that nothing in that provision bars his way.”

Important Considerations for New Jersey School Districts

In view of the above, school districts throughout New Jersey should bear in mind the Perez decision when considering how to respond to litigation initiated on behalf of a student

with a disability against the district. For example, in determining whether to settle a special education due process matter and negotiating the settlement terms, the district should thoroughly consider whether the settlement will constitute a “global” resolution that will fully settle any and all claims for money damages that may exist at that time, regardless of whether such claims have actually been asserted, or whether the settlement will be limited to a resolution of IDEA claims only, leaving the potential for a future lawsuit to be brought in court seeking money damages based upon alleged disability discrimination.

Particularly in a due process matter in which the district’s defense is not especially strong and the family is likely to prevail on their claims alleging a denial of FAPE, the district should anticipate that the family may assert a demand for compensatory damages as part of any settlement negotiations. If the due process case cannot be settled, it is possible that the family may pursue a lawsuit in State or federal court at the same time the due process case remains pending. Pursuant to the Court’s holding in Perez, such a lawsuit would not be dismissed for failure to exhaust administrative remedies, and would most likely proceed simultaneously while the due process matter must also be defended or resolved.

Furthermore, school boards would be well-advised to review and consider the extent to which they maintain insurance coverage for special education due process matters as well as lawsuits seeking damages pursuant to the ADA, Section 504, and the NJLAD. Because the IDEA, the ADA, Section 504, 42 U.S.C. §1983, and the NJLAD are all fee-shifting statutes that expressly authorize an award of reasonable attorneys’ fees and costs to be paid to the prevailing party, a student or family who obtains significant relief as a result of pursuing litigation under any of these statutes will likely be entitled to payment of their reasonable counsel fees and costs by the school district. In addition, in view of the Supreme Court’s ruling in Perez, if a school district agrees to settle a special education due process matter and the IDEA claims raised therein, but the settlement does not explicitly address potential claims under other applicable laws, the district will most likely have continued exposure to a significant money damages award (plus reasonable attorney’s fees and costs) in the event that the family chooses to pursue a lawsuit on behalf of the student, notwithstanding the settlement.

The Busch Law Group will continue to provide legal updates on this issue and other significant issues relevant to school boards as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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