

## Man's Best Friend In School – What's Next For Administrative Remedies?

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Do individuals have to exhaust administrative remedies outlined under the federal Individuals with Disabilities Education Act (IDEA) prior to bringing suit for damages in federal court? That is the question asked of the U.S. Supreme Court in *Fry v. Napoleon Community Schools* during oral arguments at the end of October. The Supreme Court is expected to rule this summer. The case arose when a student with cerebral palsy wished to use a service dog, which helped her live independently, at school. Initially, the school refused to permit the service dog to accompany the student because the student's Individualized Education Plan (IEP) provided for human aid, rendering the service dog unnecessary. After months of mediation, the school temporarily allowed for a trial period, but ultimately refused to permit the service dog to accompany the student the following year. The parents brought suit against the school district under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (504), bypassing IDEA. The United States District court for the Eastern District of Michigan granted the school district's motion to dismiss because the claims necessarily implicated the IDEA, which requires the parents to exhaust all administrative remedies before suing under the ADA and 504. The parents appealed and argued that the exhaustion requirement did not apply because they were seeking damages, which is not the sort of relief the IDEA provides. The U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal and held that the parent's claims were essentially educational, which are precisely the sort of claims the IDEA was meant to address, and therefore the exhaustion requirement applied. At least five federal appellate circuits – First, Second, Seventh, Eleventh, and Sixth that presided over this case – require the exhaustion of IDEA administrative remedies prior to bringing suit in federal court for damages under the ADA and 504. There are several negative implications for school districts if parents are allowed to circumvent the exhaustion requirement. First, this would cut against the speedy resolutions that the IDEA carefully sets up. IDEA procedures provide for mandatory timelines to resolve disputes, whereas federal litigation may take months, if not years, creating a financial burden on schools. Second, IDEA requires disputes that are adjudicated to be decided by a state hearing officer who is familiar with the statute and meets certain qualifications, such as experience serving children with disabilities. This requirement helps to ensure that the decision maker is both familiar with the complexities of providing Free Appropriate Public Education (FAPE) and administering IEPs and 504 plans. Moreover, by not exhausting the administrative process, a judge does not have the benefit of a detailed factual record from a qualified hearing officer. The ability to file directly in federal court, without first exhausting IDEA, could have far-reaching effects on school districts. We will keep you updated as this Supreme Court case progresses.

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