EDUCATION LAW CENTER | FACT SHEET

LEGAL UPDATE

RIGHT TO COMPENSATORY DAMAGES FOR DISABILITY DISCRIMINATION

August 2023

In March 2023, the U.S. Supreme Court ruled that parents are not required to exhaust administrative procedures under the Individuals with Disabilities Education Act (IDEA)[1] before seeking relief in the form of compensatory damages under Title II of the Americans with Disabilities Act of 1990[2] (ADA) or Section 504 of the Rehabilitation Act of 1973[3] (Section 504).[4] This fact sheet provides an analysis of that case, *Perez v. Sturgis Public Schools*, and prior decisions addressing the right to damages for students with disabilities.

WHAT IS THE *PEREZ V. STURGIS PUBLIC SCHOOLS* CASE ABOUT?

In *Perez*, the parents of a student who is deaf sought relief in federal court after their son's school consistently sent home report cards and progress reports indicating that he was making progress in school, while in reality he was not receiving appropriate accommodations and was not progressing as indicated.[5] His parents only discovered these issues when, just months before graduation, the school announced it would deny their son his diploma.[6]

The student's parents sued his school district, alleging that the district failed to provide their son with appropriate educational services and supports, such as sign language and an appropriately trained aide in violation of the IDEA, the Rehabilitation Act, ADA, and state anti-discrimination laws.[7] After settling the IDEA claims, the lower court dismissed antidiscrimination claims for failure to exhaust under the IDEA.[8] The Supreme Court reversed this decision, holding that parents can sue school districts for damages independently and in addition to any remedies available under the IDEA.[9]

WHY IS THE *PEREZ V. STURGIS PUBLIC SCHOOLS* DECISION IMPORTANT?

This decision makes clear that parents need not exhaust all administrative remedies under the IDEA if they are pursuing a remedy that the IDEA does not provide (e.g., compensatory damages, lost income, etc.).[10] The IDEA provides only equitable remedies, such as compensatory education services and tuition reimbursement; it does not permit an award of compensatory damages as an option for relief. Accordingly, parents and students are **not** required to exhaust the IDEA's administrative procedures before seeking compensatory damages under federal antidiscrimination statutes.[11]

The *Perez* case builds on prior Supreme Court precedent, which recognized that the IDEA and disability discrimination laws focus on different wrongs and seek different forms of redress:

> The [IDEA's] goal is to provide each child with meaningful access to education by offering individualized instruction and related services appropriate to her "unique needs." ... By contrast, Title II of the ADA and § 504 of the Rehabilitation Act ... aim to root out disability-based discrimination, enabling each covered person (sometimes by means of reasonable accommodations) to participate equally to all others in public facilities and federally funded programs. ... In short, the IDEA guarantees individually tailored educational services, while Title II and § 504 promise non-discriminatory access to public institutions.[12]

In *Fry*, the Court held that IDEA's exhaustion requirement does **not** apply unless the plaintiff "seeks relief for the denial of" a free and appropriate public education "because that is the only 'relief'" IDEA's administrative processes can supply.[13]

WHEN IS A PARENT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES?

A claim must be exhausted at the state administrative level when the "gravamen" of a parent's claim concerns denial of a "free appropriate public education" (FAPE), in which case a parent must generally exhaust all administrative options for dispute resolution prior to seeking relief in court.[14] This means a parent must go through the entire administrative due process proceeding made available under the IDEA, which includes a hearing before an administrative officer, before they can file a lawsuit in federal court.[15] In the IDEA context, there are only a few exceptions to this general rule:

(1) If the parent is seeking administrative relief that would be futile or inadequate;

(2) If the case presents a purely legal question;

(3) If the administrative agency cannot grant relief;

(4) If exhaustion would cause severe or irreparable harm;[16] or

(5) If plaintiffs allege "systemic legal deficiencies" and, correspondingly, seek systemwide relief that cannot be provided through the administrative process.[17]

DO COURTS CONSIDER THE TYPE OF REMEDY A PARENT SEEKS TO DETERMINE WHETHER A CLAIM MAY BE FILED DIRECTLY IN COURT?

Yes. When a parent brings an IDEA claim for denial of a FAPE, a parent is requesting equitable relief such as compensatory education services to remedy a past denial of a FAPE and ensure the student receives a FAPE going forward. Parents may also receive reimbursement for educational expenditures that the state should have paid to ensure the child received a FAPE. Courts may not award compensatory damages under the IDEA, including damages for lost income, medical bills, etc.

In contrast, claims alleging disability discrimination asserted under the ADA and Section 504 authorize a court to award plaintiffs monetary damages, including compensation for lost income or medical bills or other financial harms, that are categorically unavailable under the IDEA. In these cases, exhaustion of IDEA procedures is unnecessary as a parent is seeking a different remedy and alleging harm other than the denial of the IDEA's core guarantee of a FAPE.[18] In *Perez*, the Supreme Court acknowledged that the case was originally premised on a denial of FAPE but the parents also sought a remedy for disability discrimination, which was not available under the IDEA.[19]

ARE CLAIMS OF DISABILITY DISCRIMINATION ALWAYS SEPARATE AND DISTINCT FROM A DENIAL OF A FAPE?

Not always. Courts examine the "gravamen" of the plaintiff's complaint to determine if the suit focuses on the denial of a FAPE.[20] The Supreme Court has identified three questions to consider in making this determination:

(1) Could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school—say, a public theater or library?[21] If so, then the claim focuses on discrimination, not deprivation of a FAPE.

(2) Could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance?[22] Again, if so, the remedy requested is probably for simple discrimination.

(3) Did the plaintiff previously pursue IDEA's administrative remedies? If so, this may provide strong evidence that the substance of a plaintiff's claim concerns the denial of a FAPE.[23]

For example, in *George v. Davis School District*, plaintiffs sought a temporary restraining order requiring the school district to continue to provide their child with a paraprofessional health-care aide. Plaintiffs brought the action in federal court after the district determined their child was not eligible for special education. The court held that ultimately, unlike the parents in *Perez*, plaintiffs were seeking a remedy that **was** available under the IDEA for an alleged denial of a FAPE as the parents could have challenged the special education eligibility determination by requesting a due process hearing; instead, the parents had sought to bypass that step by filing a case in federal court under different statutes. Finding the plaintiffs essentially sought relief for denial of a FAPE, the court held that parents were required to exhaust administrative remedies first.[24]

Similarly, in *Roe v. Healey*, the court considered claims that students were deprived of a FAPE due to school closures related to the COVID-19 pandemic. The court reasoned that all of the claims (even those brought under statutes other than the IDEA) were essentially based on a denial of FAPE, and therefore the lawsuit could not be isolated from exhaustion requirements applicable to special education services guaranteed by the IDEA. The case was dismissed for failure to exhaust.[25]

For more guidance on seeking compensatory education as an IDEA remedy for denial of FAPE, please see ELC's fact sheet Your Student's Right to Compensatory Education.

WHAT IS THE STANDARD FOR RECOVERING COMPENSATORY DAMAGES UNDER THE ADA OR SECTION 504?

The standard for obtaining compensatory damages under antidiscrimination laws is significant. To establish a disability discrimination claim under the ADA or Section 504, a parent must demonstrate that the student:

1. Has a disability or was regarded as having a disability;[26]
2. Was otherwise qualified to participate in school activities;[27]
3. Was denied the benefits of the program or was otherwise subject to discrimination because of the child's disability.[28]

The discrimination must be intentional.[29] Intentional discrimination can be satisfied through a showing of deliberate indifference.[30] To satisfy the deliberate indifference standard, a parent must present evidence that shows:

1. The school district had knowledge that a federally protected right is substantially likely to be violated;[31]
2. The school district failed to act despite that knowledge.[32]

WHAT CAN COMPENSATORY DAMAGES LOOK LIKE?

Juries have awarded a wide range of compensatory damages based on a finding that a school district intentionally discriminated against a student because of their disability. For example, in *S. ex rel. S. v. Pueblo School District 60*, the jury awarded a student with disabilities $2.2 million in damages for constitutional, ADA, and 504 claims where a child with disabilities was repeatedly restrained in a wrap-around desk that included a restraint bar in the classroom in violation of state law.[33] In another case, *Snell v. North Thurston School District*, a jury awarded the plaintiff $35,000 for her ADA and 504 claims where a school unlawfully discriminated against their daughter by failing to provide a qualified adult to monitor her diabetes and failing to provide voice amplification to allow the child's participation in class. In this case, the parent had previously prevailed on her IDEA claim in a separate proceeding.[34]

CAN A PLAINTIFF BRING A CASE FOR BOTH EQUITABLE RELIEF AND COMPENSATORY DAMAGES?

Yes. However, if the IDEA can provide the remedies that plaintiff seeks, then administrative exhaustion of the IDEA procedures is required. As the Supreme Court explained in *Perez*, "Under our view, for example, a plaintiff who files an ADA action seeking both damages and the sort of equitable relief IDEA provides may find his request for equitable relief barred or deferred if he has yet to exhaust § 1415(f) and (g)."[35] It is important to seek advice from an attorney to determine the appropriate course of action.

CAN A PLAINTIFF OBTAIN COMPENSATORY DAMAGES FOR EMOTIONAL DISTRESS UNDER SECTION 504?

No. In *Cummings v. Premier Rehab Keller*, the Supreme Court ruled that emotional distress damages are not available in private actions pursuant to various antidiscrimination statutes authorized under the Spending Clause of the United States Constitution, including Section 504 of the Rehabilitation Act of 1973, as well as the Affordable Care Act (ACA), Title VI, and Title IX.[36] In part, the Court reasoned that since emotional damages are generally not available in breach of contract actions, federal funding recipients would not have clear notice at the time they were deciding whether they should accept federal dollars of their potential liability for emotional damages.[37] This same logic would apply to bar claims for emotional distress under the ADA.

CAN A PLAINTIFF OBTAIN PUNITIVE DAMAGES UNDER THE ADA OR SECTION 504?

No. As a matter of law, punitive damages may not be awarded for violations of the ADA or Section 504.[38] Accordingly, no plaintiff should seek punitive damages alongside compensatory damages in a complaint.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.

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[1] 20 U.S.C. § 1400 et seq.
[2] 42 U.S.C. § 12101 et seq.
[3] 29 U.S.C. § 794.
[4] *Perez v. Sturgis Pub. Schs.*, 143 S. Ct. 859 (2023).
[5] *Id.* at 862.
[6] *Id.*
[7] *Id.*
[8] *Perez*, 143 S. Ct. at 860.
[9] *Perez* at 864.
[10] *Id.* at 865 (affirming *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017) that a plaintiff does not need to exhaust administrative processes under IDEA that "cannot supply" the relief he seeks).
[11] *Id.*
[12] ***Fry*, 580 U.S. at 170.**
[13] *Id.*, at 165, 168.
[14] *Id.* at 159.
[15] *Id.* at 159; 20 U.S.C. §§ 1415(f)-(g).
[16] *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 275 (3d Cir. 2014)
[17] *Beth V. by Yvonne V. v. Carroll*,87 F.3d 80, 89 (3d Cir. 1996).
[18] *Fry*, 580 U.S. at 158.
[19] *Perez* at 860.
[20] *Fry*, 580 U.S. at 169–70.
[21] *Id.*
[22] *Id.*
[23] *See George v. Davis School Distric*t, 2023 WL 5000989 (D. Utah).
[24] *Id.* at 12.
[25] *Roe v. Healey*, 2023 WL 5199870, 8 (1st Cir. 2023).
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (2013).
[30] *Id.* See e.g., *Chambers ex rel. Chambers v. School Dist. of Phila. Bd. of Educ.*, 537 F. App'x 90, 96-97 (3d Cir. 2013) (finding an issue of genuine fact as to whether a district was deliberately indifferent when the school was aware that therapies were not provided, ignored parents' requests for hearings, and failed to place student in appropriate programs.); *D.C. ex rel. A.T. v. Pittsburgh Pub. Schs.*, No. 19-cv-12, 2022 WL 267359, at *12 (W.D. Pa. Jan. 28, 2022) (holding that whether district provided sufficient behavioral supports promptly enough to student with a disability must be submitted to a jury where district failed to act despite knowledge that plaintiff's 504 rights); *Beam v. Western Wayne Sch. Dist.*, No. 15-cv-01126, 2018 WL 6567722, at *7-8 (M.D. Pa. Dec. 13, 2018) (school's decision to send communications regarding child's behavioral issues but not their academic performance suggested that the school purposefully withheld this information, constituting deliberate indifference.).
[31] *Durrell*, 729 F.3d at 265.
[32] *Id.*

[33] *S. ex rel. S. v. Pueblo Sch. Dist.*, No. 09-cv-00858, 2015 WL 1909686 (referencing $2.2 million verdict under the ADA and 504) and *S. ex rel. S. v. Pueblo School District 60*, 819 F. Supp. 2d 1179 (D. Colo. 2011).
[34] *See Snell v. N. Thurston Sch. Dist.*, No. C13-5786, 2015 WL 8621913, at *1 (W.D. Wash. Dec. 14, 2015) (referencing the $35,000 jury award for the ADA and 504 claims).
[35] *Perez* at 863.
[36] Cummings v. Premier Rehab Keller, (2022), https://www.supremecourt.gov/opinions/21pdf/20-219_1b82.pdf.
[37] *Id.* at 1572-74.
[38] *See Barnes v. Gorman*, 536 U.S. 181, 189 (2002); *see also A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 804 (3d Cir. 2007).