The Latest Supreme Court "Special Education" Decision: *Perez v. Sturgis Public Schools*

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On average, the Supreme Court only decides one case specific to K–12 students every four years. About a third of these cases focus on the practice of litigation rather than education, such as burden of proof (*Schaffer* – 2005), expert witness fees (*Murphy* – 2006), and pro se parents (*Winkelman* – 2007).

The latest case, *Perez v. Sturgis Public Schools* (March 21, 2023) is only understood in tandem with a previous decision focused on specialized litigation rather than special education, *Fry v. Napoleon Community Schools* (2017). Both concern the IDEA issue of "exhaustion," which refers to the general requirement to complete the administrative adjudication stage before proceeding to court. More specifically, a 1986 amendment to the IDEA allows for bringing non-IDEA federal claims, such as those under Section 504 or the ADA, on behalf of an IDEA-covered student but only after exhausting the due process hearing (and in the eight "two-tiered" states, the review officer) stage before going to court. The courts have gradually evolved limited exceptions to this exhaustion requirement.

In *Fry*, the Supremes decided that the exhaustion requirement applies only if the crux of the non-IDEA federal claim amounts to FAPE. In this case, the parents brought an ADA claim to challenge the school's denial of access for the child's service animal, and the remedy they sought was money damages. The *Fry* Court sent the case back to the lower courts to determine whether the crux of this claim amounted to FAPE. If the answer is "no," exhaustion would not apply regardless of the relief that they sought. Thus, the Court declined to answer the separate question of whether seeking money damages, which is available under the ADA but not the IDEA, was another exception to the exhaustion requirement.

In *Perez*, the Court addressed the residual question from *Fry*. In this case, the parents sought money damages under the ADA for the lack of appropriate interpreter services to a deaf student, which indisputably amounted to a FAPE claim. The *Perez* Court unanimously answered that the IDEA's exhaustion provision does not apply "where a plaintiff brings a suit under another federal law for compensatory damages—a form of relief everyone agrees IDEA does not provide."

A common misunderstanding in the immediate wake of *Perez* is that the exhaustion requirement applies to non-IDEA federal claims, such as those under Section 504 or the ADA, on behalf of IDEA-covered students if they are for money damages but also amount to FAPE. For example, a recent press release from CASE interpreted *Perez* as not changing the requirement that when parents bring non-IDEA FAPE claims "[the] administrative process must be exhausted before they turn to the courts for final adjudication." Instead, properly understood, money damages and FAPE are separate exceptions. Thus, such federal non-IDEA claims for money damages are <u>not</u> subject to the exhaustion requirement regardless of whether their crux amounts to FAPE.

The result of *Perez* is to make it easier to go directly to court for federal non-IDEA claims for money damages on behalf of IDEA-eligible students. Thus, there will be more such litigation in federal courts, increasing (a) the level of court congestion, (b) the potential for school district liability, and (c) the parents' leverage for settlements.

However, the practice of special education remains almost entirely unaffected. Other than observing the effect on litigation, including settlements, special education practitioners should recognize that the odds of federal court award of money damages in such Section 504 and ADA suits remain very strongly against the parents and any resulting liability is for the school district, not for the individual teacher or administrator.