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Legal Sidebar

Perez v. Sturgis Public Schools: the Supreme Court Considers a Futility Exception to IDEA Administrative Exhaustion

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The Supreme Court recently considered the interplay between the Individuals with Disabilities Education Act (IDEA) and other federal laws protecting students with disabilities, particularly the Americans with Disabilities Act (ADA). In *Perez v. Sturgis Public Schools*, a deaf student sought money damages under the ADA for his school district's alleged failure to provide him with any interpreting services for most of his schooling. The questions before the Court were (1) whether the IDEA requires children with disabilities and their parents to complete state-level administrative proceedings before filing related ADA claims in court, even when further administrative proceedings are "futile"—that is, when they cannot provide the child with any further relief; and (2) whether plaintiffs seeking only money damages under the ADA must pursue the IDEA administrative process at all, when money damages can never be awarded in IDEA proceedings.

The Court issued its decision in *Perez* on March 21, 2023, declining to rule on the first question. On the second, contrary to the position of every circuit court to consider the issue, the Court held that plaintiffs do not have to go through the IDEA's administrative process when they seek damages or other remedies under the ADA or Section 504 of the Rehabilitation Act of 1973 (Section 504) that the IDEA does not allow. This Sidebar reviews the statutory and legal background of the case, the implications of the Court's ruling and the issues that remain undecided, and some potential considerations for Congress.

Statutory Framework—the IDEA, the ADA, and Section 504

A number of federal laws protect the rights of public school students with disabilities and allow students to receive needed services. Under the IDEA, Congress has authorized grants to state and local education agencies to provide children with disabilities "a free appropriate public education" (FAPE). Public schools must also comply with Title II of the ADA and Section 504, which prohibit state and local governments and recipients of federal funds, respectively, from discriminating against people with disabilities. Students alleging disability discrimination against their schools often seek to bring claims under the ADA and/or Section 504 in addition to, or in lieu of, the IDEA. (Students may also seek to bring

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claims under 42 U.S.C. § 1983 if they think schools violated their constitutional rights, such as when teachers physically abuse disabled students.)

While related, the IDEA, ADA, and Section 504 focus on different wrongs. As the Supreme Court explained in a 2017 decision:

> 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 nondiscriminatory access to public institutions.

These laws also provide for different redress. When a parent or student brings a successful IDEA claim, a court may order a school to provide services to remedy the 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. Importantly, courts may not award compensatory damages under the IDEA, including damages for emotional distress, medical bills, or lost income.

Some, but not all, ADA and Section 504 remedies are similar. Under the ADA and Section 504, courts may order schools to take action to remedy disability discrimination. A court could order services, which may be (but are not necessarily) similar or identical to the services a student can receive under the IDEA. However, courts may also be able to award ADA and Section 504 plaintiffs damages, such as compensation for lost income or medical bills or other financial harms, that are categorically unavailable under the IDEA. (An exception is damages for emotional distress: in 2022, the Supreme Court held that plaintiffs may not receive compensatory damages for emotional distress under Section 504, and lower courts increasingly hold that emotional distress damages are also unavailable under Title II of the ADA.) Students and parents therefore may have reason to bring ADA and Section 504 claims in addition to IDEA claims.

The procedures for making claims under the IDEA also diverge from those under Section 504 and the ADA. Under the IDEA, parents and schools must follow a detailed complaint resolution process when they cannot reach agreement on a child's services. That process expressly encourages the informal resolution of complaints through settlement. If the parties cannot settle, they proceed to an administrative due process hearing. Only after parents and students have fully completed—or, in legal terms, "exhausted"—the state-level administrative process can they bring an IDEA suit in court. Notably, if the family rejects an offer of settlement from the school and then fails to obtain a better outcome later, they cannot recover attorneys' fees and costs, relief that is otherwise available for successful claimants. This provision, among others, encourages parents and students to settle their claims.

In contrast to the IDEA, neither the ADA nor Section 504 (nor § 1983) require administrative exhaustion; claimants can proceed straight to court. Concerned, in part, that plaintiffs would skip the IDEA administrative process by pleading only Section 504 or § 1983 claims (the ADA did not yet exist), in 1984, the Supreme Court decided that children with disabilities could challenge their educational services exclusively through the IDEA. Congress then abrogated that holding, amending the IDEA to add 20 U.S.C. § 1415(*l*), which provides that the IDEA does not "restrict or limit the rights, procedures, and remedies available under . . . other Federal laws protecting the rights of children with disabilities," including the ADA and Section 504. However, the provision continues that plaintiffs with non-IDEA claims "seeking relief that is also available under" the IDEA must exhaust IDEA administrative procedures "to the same extent as would be required had the action been brought under" the IDEA.

Congress thus created a procedure where a plaintiff with claims under one law—the ADA or Section 504—must, in some circumstances, complete administrative procedures designed to remedy violations of

a different law—the IDEA—before going to court. This process has led to significant litigation over exactly when ADA and Section 504 plaintiffs must use the IDEA's administrative procedures.

In a 2017 case, the Supreme Court held that ADA and Section 504 plaintiffs "sought relief that is also available under" the IDEA, and therefore had to administratively exhaust their claims, when the "gravamen" of their suit was the denial of a FAPE, regardless of whether the plaintiffs brought claims under the IDEA. The Court expressly declined to consider whether plaintiffs who sought only damages, which are not available under the IDEA and cannot be awarded in IDEA administrative hearings, would have to exhaust claims related to the denial of a FAPE.

That question, in addition to the question of whether there is a general futility exception to IDEA exhaustion, arose in *Perez v. Sturgis Public Schools*. In short, *Perez* asked whether Section 504 and ADA plaintiffs should have to take the time and expense to go through state administrative proceedings established under the IDEA when those proceedings either cannot give them what they want—damages—or cannot give them any useful relief at all.

Case Background and the Sixth Circuit's Decision

In *Perez*, the plaintiff, who is deaf, alleged that his school district violated his rights under the ADA by failing to provide him with a qualified sign language interpreter for 12 years. He claimed that as a result of this failure, and the fact that the school allegedly misled the family about the services it was providing him and his academic progress, he did not receive a FAPE and could not graduate from high school.

The family sought relief under the IDEA, Section 504, and the ADA. As is common in IDEA administrative proceedings, the IDEA hearing officer dismissed the ADA and Section 504 claims for lack of jurisdiction. The parties then settled the IDEA claim for all of the relief requested, including compensatory educational services at the district's expense and attorneys' fees. The hearing officer therefore dismissed the IDEA claim. The family then brought suit in federal court under the ADA seeking compensatory damages.

The Sixth Circuit dismissed his suit. The circuit court held that, because the gravamen of the complaint was the denial of a FAPE, the family needed to "first complete the IDEA's full administrative process" before suing for damages under the ADA. Because the plaintiff settled the IDEA claim, he did not allow a hearing officer to pass on the claim and develop an administrative record, and therefore, the circuit court held, he did not fully exhaust his administrative remedies.

The circuit court rejected the family's argument that the IDEA does not require exhaustion when attempting to complete the administrative process would be futile. In his case, the plaintiff argued that he could have gained nothing from proceeding to a hearing: the hearing officer could not have awarded damages or ruled on the IDEA claim once the parties settled. Had the plaintiff rejected the settlement, he might have received a less favorable outcome at the hearing and lost his attorneys' fees, in addition to potentially losing access to services. Nevertheless, the Sixth Circuit held that there are no exceptions to the IDEA's exhaustion provision when a student complains about the denial of a FAPE, meaning that students must go through the entire process, even if it is useless to them, before they can go to court with claims under Section 504 or the ADA.

The circuit court relied on a 2016 decision from the Supreme Court, *Ross v. Blake*. In that case, the Supreme Court held that the Prison Litigation Reform Act's (PLRA) exhaustion provision is not subject to judge-made exceptions, explaining that "mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion." The Sixth Circuit understood the IDEA to enact this kind of mandatory exhaustion regime. The circuit court also disagreed that exhaustion was futile, when the process could have allowed the hearing officer to make an administrative record that would have assisted judicial review.

The Sixth Circuit opinion drew a dissent. The dissent agreed that a plaintiff cannot skip administrative exhaustion simply by seeking money damages for the failure to provide a FAPE, so long as a hearing officer can provide some other relief. However, the dissent referred to the Supreme Court's 1988 opinion in *Honig v. Doe*, in which the Court stated that the IDEA did not require exhaustion when exhaustion was futile—a statement that the Sixth Circuit majority characterized as dictum that could not be reconciled with *Ross*. Because the hearing officer could not provide Perez with anything more than what he had obtained via settlement, the dissent agreed with the argument that exhaustion was futile and would have allowed the ADA damages claim to proceed.

Supreme Court's Decision and Potential Impact

The question of whether students requesting only damages have to go through the administrative process

In a unanimous decision written by Justice Neil Gorsuch, the Supreme Court held that ADA and Section 504 plaintiffs seeking remedies, such as compensatory damages, that are not available under the IDEA do not have to exhaust their claims through the IDEA process before going to court, even if the claims are based on the denial of a FAPE. The Court's ruling was based on the text of 20 U.S.C. § 1415(*l*), which, as noted above, states that "before the filing of a civil action under [other federal] laws seeking relief that is also available under [the IDEA]," plaintiffs must exhaust the IDEA's administrative procedures. The school district had argued that plaintiffs are "seeking relief that is also available" under the IDEA when they "seek to enforce their right to a FAPE, no matter the specific remedy sought." The Supreme Court determined that the term "relief" is synonymous, at least in this context, with the term "remedy." Thus, according to the Court, plaintiffs are "seeking relief" that is also available under the IDEA (and must exhaust) only when they seek a specific remedy the IDEA can provide, not when they file a claim for which the IDEA could supply *some* remedy.

The Court's decision in *Perez* departs from the reasoning of the circuit courts that had considered the issue, all of which had held that plaintiffs must exhaust claims based on the denial of a FAPE regardless of the remedy they seek. As one circuit court reaching this conclusion reasoned, for example, requiring plaintiffs with FAPE claims to exhaust is "necessary to enforce the [IDEA's] statutory scheme," to allow "educational professionals" to address claims in the first instance and prevent plaintiffs from circumventing exhaustion by "tacking on a request for money damages." The school district and its amici in *Perez* argued similarly that a contrary interpretation would undermine collaboration between schools and parents and incentivize parents to pursue money damages at the expense of educational services.

On the other hand, alongside his amici, Perez and the Solicitor General disagreed with the premise that parents will dodge the administrative process, as doing so would forfeit educational services to which their children may be entitled. Requiring those who seek only money damages to pursue administrative hearings that cannot help them, Perez and his amici argued, wastes time and resources.

The Supreme Court ultimately said little about how its ruling would impact enforcement of the IDEA or which interpretation best aligned with the statute's goals. Rejecting the school district's arguments about congressional purpose, the Court remarked both that the text controlled over any "speculation as to Congress' intent" and that neither side's argument clearly prevailed from a purposivist perspective.

The question of whether students have to go through a "futile" administrative process

The Supreme Court in *Perez* declined to decide the other question on which it granted review: whether parents and students would have to exhaust the IDEA administrative process when doing so would be

futile. Given its conclusion that Perez was not required to go through the IDEA administrative process because damages are not available under the IDEA, the Court deemed it unnecessary to decide whether plaintiffs who *are* required to undertake that process must do so even when it would be futile. The Court's resolution of the damages question most likely eliminates one potential outcome of the Sixth Circuit's decision: that a family might be forced into a trade-off between receiving immediate IDEA services via a pre-hearing settlement and pursuing damages under the ADA or Section 504. The Supreme Court's ruling makes clear that ADA and Section 504 plaintiffs can pursue their damages claims in court, no matter whether they have fully exhausted the administrative process for seeking equitable relief (i.e., services).

The Court's limited ruling leaves for another day the question of whether there are cases, beyond those in which plaintiffs seek damages, in which plaintiffs with FAPE-related claims can skip administrative proceedings. In addition to futility, courts have recognized other exceptions to IDEA exhaustion, such as when plaintiffs challenge certain general policies or systemic practices rather than their individual educational services, or when going through the administrative process would cause irreparable harm. A decision recognizing judge-made exceptions to the exhaustion requirement could, depending on one's perspective, weaken the IDEA's administrative procedures or continue to allow flexibility in cases where the administrative process is not the best forum for resolving claims.

The Supreme Court in *Perez* also declined the opportunity to give guidance on interpreting other statutory administrative exhaustion provisions. Such requirements—and judicially recognized futility exceptions—are widespread in federal law. *Ross* contemplated that "an exhaustion provision with a different text and history from [the PLRA] might be best read to give judges the leeway to create exceptions or to itself incorporate standard administrative-law exceptions." *Perez* offered the Court an opportunity to further clarify what expressions of legislative intent in the text and history of an exhaustion provision allow for judge-made exceptions. That guidance awaits another case.

Considerations for Congress

The matters at stake in *Perez* were purely statutory. Congress has a history of legislating in this area in response to the Supreme Court. Congress may opt to clarify its intent regarding when students with ADA, Section 504, or other claims must exhaust the IDEA's administrative process. Futility is not the only judge-made exhaustion exception, and Congress may consider whether it wants to expressly write such exceptions into the IDEA or other statutory exhaustion schemes. In doing so, Congress could allow claimants to take advantage of an exception to exhaustion in certain circumstances, but not others; it need not adopt the same approach to all claims.

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