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New Exhaustion IDEA Case Ruling

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On September 23, 2020, the Ninth Circuit Court of Appeals held that a high school student's claims for violations of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) did not require the student to exhaust the process required by the Individuals with Disabilities Education Act (IDEA) because her claims were based on compliance with the ADA and Section 504 and not the IDEA. *McIntyre v. Eugene School District 4J* (9th Cir., Sept. 23, 2020, No. 19-35186) __ F.3d __ [2020 WL 5651279]. Where a case requires the plaintiff, usually a student, to first prove an IDEA violation (whether by way of failure to identify or provide FAPE), they must first exhaust. If plaintiff can establish violation of laws, like the ADA or Section 504, without establishing a violation of the IDEA, they need not exhaust. In this case, the Ninth Circuit Court of Appeal confirmed there is no need to exhaust claims when the Plaintiff is not eligible and does not contend to be eligible or entitled to remedies provided by the IDEA. The Supreme Court therefore remanded Plaintiff's discrimination claim to the district court for decision on the merits without exhaustion. At the end of the day, the case does not involve whether student should have had an IEP, or its contents. Accordingly, exhaustion under the IDEA is unwarranted and unnecessary to proceed.

Background

Student was diagnosed with attention deficit disorder (ADD) and provided an accommodation plan required under Section 504 (504 Plan) prior to entering high school and enrolling in her school district's language immersion program. While in high school, Student's foreign language and math teachers refused to implement her 504 Plan. The school district did not compel Student's teachers to comply with Section 504, but instead offered Student an independent study program which lacked International Baccalaureate (IB) certification and Advanced Placement (AP) accreditation, and was mentored by a teacher with no language certification. In addition, the school district did not intervene to prevent harassment and bullying by other students following the unrelated transfer of Student's foreign language teacher, declined to follow the emergency protocol in Student's 504 Plan when Student was injured in class, and refused to help her obtain necessary evaluations and approvals for IB and College Board testing accommodations. Student sued the school district for violations of Title II of the ADA and Section 504, alleging discrimination for failure to provide reasonable accommodations and creation of a hostile learning environment. The district court dismissed Student's complaint for failure to exhaust administrative remedies under the IDEA.

Decision

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The Ninth Circuit reversed in part, holding that Student was not obligated to exhaust administrative remedies because Student had neither asserted claims under the IDEA, nor sought or been provided an individualized education program (IEP). The gravamen, or crux, of her claims was not that she was denied a FAPE, but instead that she had been discriminated against based on her disability.

In so holding, the Ninth Circuit applied the standard set forth in *Fry v. Napoleon Cmty. School*, — U.S. —, 137 S. Ct. 743 (2017), which offered guidance for courts considering whether the gravamen of a complaint is something other than the denial of a FAPE. The Court answered both *Fry* hypothetical questions in the affirmative, noting that Student could have brought essentially the same claims if the conduct had occurred at a public facility other than a school (e.g., a public theater or library), and that an adult at the school could also have pressed essentially the same grievance.

The Court found it relevant that the school district had failed to provide Student with *accommodations*, such as extra time for exams and compliance with her emergency health protocol, rather than special education *instruction*, as might be the case for a student with an IEP. Because Student had never sought nor received special education and related services, her claims could not be for interference with such services. Additionally, the Court observed that, under the ADA and Section 504, accommodations such as those Student alleges she was denied may be required for a variety of entities and that even adult plaintiffs might be entitled to such accommodations. Finally, the Court found it compelling that Student had never sought an IEP or any of the IDEA's procedural protections, but had instead sought resolution under non-IDEA procedures prior to filing suit. In summary, although Student's claims bore "some articulable connection" to her education, her complaint did not seek the "'only relief that an IDEA officer can give" – that is, "relief for a denial of a FAPE.'" As a result, the Court dismissed the district court's reversal of Student's complaint for failure to exhaust administrative remedies, and remanded the case for reconsideration of an unrelated issue.

Impact

This opinion represents only the second published Ninth Circuit opinion to consider application of *Fry* to questions of administrative exhaustion of remedies. While specific to the facts of this case, it sheds additional light on whether the gravamen of a claim is for denial of a FAPE, and makes clear that the standard is higher than merely bearing "some articulable connection to the education of a child with a disability." The holding in this case may deprive school districts of the defense that the claimant failed to exhaust administrative remedies before proceeding to Court. However, this case also clarifies that in order to avoid having to exhaust administrative remedies under the IDEA, parents cannot simply allege that they do not seek remedies available under the IDEA, but must instead demonstrate that the actual relief sought is for something other than the denial of FAPE.

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