SCOTUS Service Dog Decision Could Spell Bad News For Schools

Insights
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In a unanimous decision, the U.S. Supreme Court today ruled that a disabled child's parents were not legally required to jump through certain additional hoops and exhaust administrative remedies in a service animal dispute before suing a school for damages under federal antidiscrimination law. This is a concerning decision for schools and school districts, as it will likely lead to an increase in lawsuits (*Fry v. Napoleon Community Schools*).

What Is "Administrative Exhaustion?"
The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is a federal law that obligates public schools to make "free appropriate public education" available to all students with disabilities. Those wishing to bring a claim under the statute must exhaust their administrative remedies if they seek "relief that is also available" under IDEA, even if they do not include IDEA claims in their complaint.

Essentially, the statute requires plaintiffs to follow the IDEA's due process administrative hearing procedures before filing suit when the injuries alleged can be remedied through IDEA or when the injuries relate to specific substantive protections of the IDEA.

Show Me The Money: But How Do I Get There?
In 2009, Stacy and Brent Fry procured a golden doodle service dog named Wonder for their daughter E.F., then five years old, who suffers from cerebral palsy. The Napoleon School District refused to allow E.F. to bring Wonder to school because E.F. already had a human aide who could provide the same or similar services as Wonder.

District representatives and the family's attorneys met and agreed to allow E.F. to bring Wonder to school on a trial basis. However, the District limited Wonder's activities such that he was not allowed to go with E.F. to recess, lunch, or to the bathroom. The trial period ended, and the school district decided that Wonder was no longer allowed to accompany E.F. to school.

In response, the Frys home-schooled E.F. for two years, then enrolled her in a neighboring county's elementary school that welcomed both E.F. and Wonder with open arms.

Fry's Case: Straight To Court
In December 2012, the Frys filed a lawsuit in federal district court alleging that the District's refusal to allow Wonder to accompany E.F. to school violated the Americans with Disabilities Act (ADA) and

Rehabilitation Act. They sought emotional distress damages for the alleged harms that the District's decision to prohibit Wonder at school inflicted upon E.F.

The family did not contend that E.F could not learn as well with a human aide, or that E.F. suffered any educational harm that can be addressed in IDEA. Instead, they argued that E.F. was less independent at school without Wonder and was humiliated by the dog's absence (for example, having to use the toilet with the door to the stall open and several adults watching).

The school claimed that the Frys could not take their case directly to federal court, arguing that they were first legally required to exhaust state administrative proceedings under the IDEA because they were asking for damages that "may be obtained" through the IDEA's administrative proceedings. For example, a hearing officer could award "retroactive reimbursement" for the costs of homeschooling E.F., which the District argues is similar, if not the same, as the damages sought by the family.

Similarly, to the extent the Frys asked the court to compensate them for E.F.'s lost independence, the District claimed that a court could likely calculate these damages by looking to tutoring and therapy costs necessary to help E.F. catch up, which would be similar to the basis for a compensatory education award under the IDEA.

The family responded by arguing that they are not required to exhaust administrative remedies because they sought relief that has nothing to do with E.F.'s education and is not available under the IDEA – emotional distress damages for the "social and emotional" harms that E.F. suffered from not having Wonder at school. The Frys also argued that exhausting their administrative remedies would be a futile process – they had already placed E.F. in a different school, did not want her Individualized Education Program (IEP) changed, and did not want any alternate services. The Frys were interested in obtaining a monetary award for E.F.'s emotional distress, period.

Lower Court Proceedings: Not So Fast

The trial court dismissed the family's case, ruling that the Frys should have exhausted all possible administrative remedies under the IDEA before they filed their lawsuit. On appeal, the U.S. Court of Appeals for the 6th Circuit agreed and upheld the dismissal.

The lower courts held that seeking monetary damages, a remedy unavailable under the IDEA, is not enough to excuse exhaustion. Otherwise, they reasoned, plaintiffs could easily evade exhaustion by simply stating a monetary demand for relief. The courts also pointed out that going through the necessary IDEA procedures would have generated a helpful administrative record that could have been used as guidance in evaluating the case for compensatory damages, even if the administrative process would not have squarely addressed the Fry's concerns.

SCOTUS Decision: Come On In

In a majority opinion drafted by Justice Elena Kagan, the Supreme Court agreed with the Frys that the family was not required to exhaust administrative remedies under IDEA before suing. The Court

reasoned that "exhaustion is not necessary" in this case because the substance of the family's lawsuit was not based on an alleged denial of free appropriate education under the IDEA.

The unanimous opinion instructs lower courts to "look to the substance, or gravamen" of a disability discrimination lawsuit when determining whether exhaustion is required. "That examination," Justice Kagan said, "should consider substance, not surface." If the substance is not focused on whether a "free appropriate education" was provided, no exhaustion will be required. The Court directed lower courts not to base their decisions on whether the complaint uses or omits "magic word" phrases like "free appropriate education" or "individualized education program."

The Court provided a "clue" to help determine whether the gravamen of a complaint against a school is sufficient to require exhaustion, recommending that a pair of hypothetical questions be asked:

First, 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? And second, could an adult at the school – say, an employee or visitor – have pressed essentially the same grievance?

If the answers to both questions are "no," then it is likely that the complaint concerns a free appropriate education, and therefore necessitates administrative exhaustion. In the Fry's case, the Court remanded the case and asked the lower court to reexamine their specific situation for a further determination about the substance of their complaint.

What This Means For Schools: Time Will Tell

The impact of this decision for schools and school districts could be significant. An increase in federal lawsuits is quite likely. Rather than just initiating IDEA due process procedures, attorneys representing students could now use a simple strategic pleading strategy (i.e. tacking on a request for monetary damages in a complaint) to commence a federal lawsuit at the same time IDEA due process is initiated. In so doing, school districts would be in the position of defending in two separate forums on the same issue, based on a technical distinction of potential relief.

It remains to be seen whether students and their parents will rush to court instead of, or in addition to, pursuing an IDEA due process claim. Theoretically, parents should still want to utilize the IDEA's administrative procedures as a quicker means to resolve disputes involving educational accommodations for their children. Now, however, the question emerges as to whether the added specter of a simultaneous federal lawsuit for monetary damages could create a change in how school districts approach handling and resolving these cases. Of further interest is how this decision may impact day-to-day determinations of what constitutes a "free appropriate education" under the IDEA given the added ADA exposure faced by public schools.

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