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# U.S. Supreme Court Eases Path for Families to Pursue Some Types of Student Disability Lawsuits

This morning, the Supreme Court of the United States issued a decision in the case of *Fry v. Napoleon Community Schools*. The decision will allow families, in certain cases, to file lawsuits directly in court under Title II of the *Americans with Disabilities Act* ("Title II") and Section 504 of the *Rehabilitation Act of 1973* ("Section 504") without first exhausting their administrative remedies.

The case, which was heard last fall by the Court, involves a Michigan student with cerebral palsy and her request to have a trained service dog accompany her during the school day. That request was denied by the student's elementary school. In response, the student's parents removed the student from school, first providing her homeschooling and then enrolling her in a

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different school that welcomed the service dog.

The family filed a lawsuit against the school district in federal court alleging that the district violated Title II and Section 504. The remedy the family sought was declaratory relief – an order finding them the prevailing party – and monetary relief. The lower courts, a federal District Court in Michigan and the Sixth Circuit Court of Appeals, held that the family was required to exhaust the Individuals with Disabilities Education Act's ("IDEA") administrative procedures prior to filing a lawsuit in federal court. In essence, the lower courts would require the family to file and convene a Section 504 or due process hearing prior to filing suit in federal court. The family filed an appeal of those decisions with the Supreme Court of the United States, however, arguing that the IDEA's exhaustion requirement only is relevant when the lawsuit involves the denial of a free appropriate public education ("FAPE") and where the relief sought is available under the IDEA. By comparison, the family argued, their case involved matters not addressed through FAPE and the remedy sought was not available under the IDEA.

Today, the Supreme Court of the United States unanimously ruled

that the IDEA's administrative procedures are unnecessary "where the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee of a FAPE." The Court highlighted certain questions to ascertain whether the "gravamen" of a case concerns the IDEA and the denial of FAPE: (1) could the plaintiff have brought the same claim if the conduct had occurred at a public facility that was not a school (*e.g.* a public library or park district); and (2) could an adult at the school have pressed essentially the same complaint. The Court indicated that if the answer to these questions is yes, then a complaint probably does not concern a FAPE issue and may proceed without exhausting administrative remedies.

The Supreme Court of the United States remanded the case to the Sixth Circuit Court of Appeals for proper analysis of the family's complaint and request for relief to determine if the IDEA and the core guarantee of FAPE is involved.

The determination in *Fry* may have the outcome of increasing the amount of lawsuits filed against school districts for Title II and Section 504 claims, thereby increasing the possibility that a district may face monetary damages for such a claim. Because of the increased possibility of legal liabilities, we recommend

that school districts contact their insurance carriers to confirm that their existing policies will cover claims made following the holding in *Fry*. If a district's existing policy does not cover such claims, we recommend exploring the costs of adding additional, appropriate coverage.

If you have additional questions about the Supreme Court's determination, the issue of exhaustion of administrative remedies, or the case in general, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).