SCHOOLS LEGAL SERVICE

LAW UPDATE
SPECIAL EDUCATION

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March 13, 2017

U.S. SUPREME COURT DECIDES FRY v. NAPOLEON

In a unanimous 8-0 decision issued February 22, 2017, the U.S. Supreme Court held that the Individuals with Disabilities Education Act's ("IDEA") administrative exhaustion requirement only applies when the substance of the parents' lawsuit concerns a denial of a free appropriate public education ("FAPE"). The decision overturned a 2015 ruling from the 6th Circuit Court of Appeals which previously held that a failure to bring an administrative claim barred parents of a student with cerebral palsy from continuing with their lawsuit alleging Section 504 and Americans with Disabilities Act ("ADA") violations. The basis of the parents' claims was that the Local Education Agency had discriminated against the student by refusing to allow the student to bring her service dog with her to school.

In reaching its decision, the Court held that the substance of the student's complaint ultimately determined whether the complaint concerned Section 504, the ADA, or the IDEA. In some cases, the Court noted a public school's decision may violate all three laws. In those cases, a student would be required to exhaust administrative remedies available under the IDEA where applicable.

But in cases in which the student's complaints are not based on the IDEA, the student is not required to exhaust administrative remedies before filing a lawsuit in Federal Court. The Court acknowledged that its decision may result in "artful pleading" by some attorneys seeking to get into Federal Court faster by avoiding an administrative hearing. To address this potential issue, the Court held that it is the substance of the student's complaint, not the use or omission of specific words, which determines whether the student's complaint is one based on Section 504/ADA or the IDEA.

The Supreme Court's test asks two questions when determining what type of lawsuit a student brings. The first question is whether the student could file the same lawsuit against a non-educational public facility - like a library or a public theatre. The second question asks whether an individual other than a student - like a parent or a school employee - could file a similar lawsuit against the district. If the answer to both questions is "yes," the Court explained it is unlikely that the lawsuit related to the provision of a FAPE and the IDEA does not apply.

Although the decision was ultimately favorable to the student, the Court's holding in *Fry* provides needed clarification on how courts are to interpret a student's lawsuit when deciding whether the complaint is about Section 504/ADA or IDEA.

Within the past couple of years, California special education lawyers have reported an increase in the number of combined lawsuits – lawsuits alleging Section 504/ADA and IDEA violations. The *Fry* decision will help to distinguish the applicable legal standard in these cases and should provide districts and their insurance carriers with an improved ability to determine coverage and to also better evaluate liability.

If you need any further assistance or advice, please feel free to contact our office.

– KYLE W. HOLMES

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