Chalkboard

An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold 2023 Issue 1

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Supreme Court Narrows the IDEA's Exhaustion Requirement

by Nathan Floyd

The United States Supreme Court recently issued an opinion in the case of *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023), which will make it easier for families of students with disabilities to bring suit against school districts for alleged discrimination on the basis of disability.

This case dealt with what is known as the exhaustion requirement of the Individuals with Disabilities Education Act (the "IDEA"). This provision, found at 20 U.S.C. § 1415(l), provides that before filing a civil lawsuit under other federal laws protecting the rights of children with disabilities, the IDEA's due process procedures must be exhausted when the relief being sought is also available under the IDEA.

In *Perez*, a deaf student filed a due process hearing complaint with the Michigan Department of Education against his former school district based on allegations that the district failed to comply with its duties under the IDEA to provide a free and appropriate public education ("FAPE") in a number of respects. The student and the school district reached a settlement before a hearing was held. Under the settlement agreement, the school district agreed to provide the student with the forward-looking equitable relief he sought, including additional schooling at the Michigan School for the Deaf.

After settling the due process complaint, the student filed a lawsuit in federal court

alleging violations of the Americans with Disabilities Act ("ADA") and seeking backwards-looking relief in the form of compensatory damages. The district court dismissed the federal lawsuit, concluding that the IDEA barred the plaintiff from bringing an ADA claim without first exhausting all of IDEA's administrative dispute resolution procedures, which he had not done, and the court of appeals affirmed based on prior precedent.

This ruling has important implications for school districts that become involved in disputes with special education students or their families.

On appeal to the United States Supreme Court, the Court unanimously found in favor of the student. It found that the IDEA's administrative exhaustion requirement in Section 1415(l) applies only to actions that seek relief <u>also available under the IDEA</u>. Because the only form of relief sought in Perez's lawsuit was compensatory damages under the ADA—which are not available under the IDEA—the IDEA's exhaustion requirement did not apply.

This ruling has important implications for school districts that become involved in disputes with special education students or their families. Going forward, claims brought under federal laws protecting the rights of children with disabilities that do not seek relief from a denial of a FAPE—the only relief available under the IDEA—are not subject to Section 1415(l)'s exhaustion requirement. Thus, a parent seeking non-FAPE related relief (such as compensatory damages) under a federal anti-discrimination statute no longer needs to exhaust the IDEA's administrative remedies. This means that it is now possible for a parent to file an IDEA due process action seeking forward-looking relief for a denial of a FAPE and simultaneously bring an action seeking compensatory damages (*i.e.*, backwards-looking non-FAPE related relief) for prior discriminatory conduct of the school district, even if the due process complaint and the lawsuit arise out of the same alleged events.

This Supreme Court decision places more power into a parent's hands and could potentially put school districts in the position of "fighting a war on two fronts" due to the wider range of remedies that students and their families can pursue. If you have questions or concerns about how to navigate troublesome situations involving the IDEA and ADA, your RFR attorneys are available to advise your school's leadership regarding best practices, policies, and procedures.

The American Humanist Association and The Establishment Clause

Note: This is a follow-up to an article published in *Chalkboard* in 2021

by M. Scott Major and Nathan Floyd

In the heart of the "Bible belt," many public schools may not see a problem allowing for religious instruction on school property. In fact, there may be a longstanding relationship with a school and a local or regional religious group that provides periodic religious instruction and material to students. You need to be aware that such a program could land your school in court. An Oklahoma school district has recently concluded a lawsuit for violating the Establishment Clause. This school had a "missionaries program," a program held on school property and during school hours in which Christian missionaries would speak to students and provide religious instruction. That lawsuit was brought by an elementary student and the American Humanist Association ("AHA"). One of the main goals of AHA is to eradicate Establishment Clause violations throughout the United States. This national association has brought lawsuits across the country against schools who violate the Establishment Clause, and now that they have been successful in Oklahoma, it is possible AHA will continue to monitor and pursue Oklahoma school districts for similar infractions.

The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." In the case of *Lemon v. Kurtzman*, the Supreme Court established a three-prong test to determine if government actions (which include school district practices and policies) violate the Establishment Clause. To pass constitutional muster, an action 1) must have a legitimate purpose, 2) must have a primary effect that neither advances nor inhibits religion, and 3) must not create an excessive entanglement between church and state. An action's failure under any single prong is a violation.

But there are other iterations of the *Lemon* test that both the U.S. Supreme Court and lower courts have employed, depending on the facts of an alleged violation. First, under the "endorsement" test, a court will analyze a school district's actions to determine 1) whether the action's purpose is to endorse or disapprove of religion and 2) whether the effect of that action creates a message of either government endorsement or disapproval. If, to a reasonable observer, a school district's action appears to endorse religion, that action is unconstitutional. Next, under the "coercion test, a violation occurs if a school district's action either 1) provides direct aid to a religion, such that it would tend to establish a state church, or 2) coerces people to support or participate in religion against their will.

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Although teaching <u>about</u> religion is permissible when presented objectively as part of a secular education program, the United States Supreme Court has unequivocally held that **religious instruction may not take place on school property during school hours**. Courts are especially vigilant in ensuring compliance with the Establishment Clause of the First Amendment to protect students from both overt and subtle religious coercive pressures in public schools or the conveyed message from schools that "religion or a particular religious belief is favored or preferred." **Widespread community support notwithstanding, board members and district employees can be held personally liable** when the district provides or facilitates religious instruction at school because such actions violate clearly established law.

A practice or policy of providing or facilitating religious instruction on campus during school hours will fail at least one of the *Lemon*, endorsement, or coercion tests. Such practices send a clear message to non-believing students and their parents that they are outsiders and disfavored in the community. Not only that, but school officials can be held personally liable, including for punitive damages, when violating the civil rights of district students in this manner through official practice, policy, or custom, and there are multiple, well-funded organizations that are devoted to bringing lawsuits against schools in particular. As a precursor to filing a suit in federal court, such organizations may issue Open Records Act ("ORA") requests to a school, requiring it to produce materials related to its missionaries program or other religious instructional program. Such a request can be valid under Oklahoma law. In properly

responding to a legitimate ORA request, a school district, without realizing it, would essentially provide the organization everything it needs to file and win a federal lawsuit against the school for violating the Establishment Clause, and, perhaps individual administrators, teachers and board members.

With this recent lesson in mind, it is incumbent upon board members, administrators and teachers, not only to protect the rights of students, but also to protect their districts and themselves from liability, to ensure that no similar practice or policy is effectuated in their districts, and, if these are in place, immediately implement appropriate remedial measures to prevent further violations. If you have questions about how to protect your students' rights and avoid Establishment Clause violations, RFR is here to help. Your RFR attorney can guide you through crafting policies and practices that comply with this and other applicable law.

If you have questions related to this article and how it may impact your school district, your RFR attorneys are ready for your call. 918-585-9211

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M. Scott Major

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We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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