

CLIENT NEWS BRIEF

Ninth Circuit Addresses Impact Of Dismissals And Settlement Of Due Process Complaints On The IDEA's Administrative Remedy Exhaustion Requirement

The recent opinion of the Ninth Circuit Court of Appeals in *Paul G. v. Monterey Peninsula Unified School District* clarifies that dismissal or settlement of a special education due process hearing in advance of a hearing and final administrative decision from the Office of Administrative Hearings (OAH), does not satisfy the requirement that a plaintiff exhaust administrative remedies under the Individuals with Disabilities Act (IDEA) before initiating a lawsuit in federal court asserting claims which could be redressed by the IDEA. In *Paul G.*, the Ninth Circuit held that an adult student with autism could not sue his school district or state educational agency under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504), for failing to make an in-state residential placement available to him without having first exhausted IDEA administrative remedies, that none of the exceptions to exhaustion of administrative remedies applied, and that settlement of his special education due process case did not satisfy the exhaustion requirement.

Background

Student Paul G. was an adult special education student with autism who began having episodes of violent and threatening behavior. After unsuccessful efforts to find an appropriate educational placement for Paul, the school district offered to place him in a residential facility. However, no residential facility in California would accept the student because he was 18 years old. Paul enrolled in an out-of-state residential facility, but later became homesick, and returned home.

The student subsequently filed for due process with OAH against both the school district and the California Department of Education (CDE), alleging that the lack of an in-state residential facility for adults denied him a free appropriate public education (FAPE) under the IDEA. As a remedy, the student sought a residential placement in California and an order directing the CDE to develop in-state residential facilities for adult students. OAH dismissed the claims against the CDE, ruling that OAH did not have jurisdiction to order the creation of facilities, and that the school district, not the CDE, was responsible for education decisions affecting the student. Thereafter, the student entered into a settlement agreement with the school district, causing OAH to dismiss the case, without the due process complaint proceeding to hearing or OAH ruling on the merits of the student's IDEA claim.

The student then initiated a lawsuit in federal court, alleging the CDE violated the ADA and Section 504, and seeking monetary damages for those alleged wrongs. The central theme of his complaint was that to receive a FAPE, he required an *in-state* residential placement, and the CDE had failed to provide him a residential placement in California. The United States District Court dismissed the student's case, due to his failure to exhaust the IDEA's administrative remedies, and the student appealed to the Ninth Circuit.

October 2019
Number 43



Marcy L. Gutierrez
Partner and Co-Chair
Special Education Practice Group
Sacramento Office
mgutierrez@lozanosmith.com



Sloan R. Simmons
Partner
Sacramento Office
ssimmons@lozanosmith.com



Amanda Ruiz
Senior Counsel
Sacramento Office
aruiz@lozanosmith.com



Amanda J. Cordova
Associate
Los Angeles Office
acordova@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

The Court's Opinion

The Ninth Circuit considered whether the student was required to exhaust the IDEA's administrative remedies under the circumstances, and if so, whether an exception to the exhaustion requirement applied. When a plaintiff seeks relief under the IDEA or under any other statute where the relief sought would also be available under the IDEA, the plaintiff must exhaust the IDEA's administrative procedures before filing a civil action. Exhaustion is not required when use of the administrative process would be futile, the claim arises from policy or practice of general applicability that is contrary to law, or it is improbable that adequate relief can be obtained by pursuing administrative remedies.

The student argued that because his federal claims were brought under the ADA and Section 504, and not the IDEA, the exhaustion of remedies requirement for IDEA claims did not apply. Applying the United States Supreme Court's test in *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017), the Ninth Circuit addressed this argument by analyzing whether his ADA and Section 504 claims could have been brought against a public facility that was not a school, or whether an adult employee or visitor could present the same grievance against the school. The court concluded that the answer to both these tests is no, because the relief Paul sought was fundamentally educational – access to a particular kind of school as required by his individualized education program (IEP). Therefore, even though the student brought suit under the ADA and Section 504, and not the IDEA, the student was required to exhaust administrative remedies because the relief sought was available under the IDEA. The Ninth Circuit also determined that none of the exceptions to the exhaustion requirement applied, thus concluding the student could not maintain this action after he failed to seek a final administrative decision regarding his alleged need for in-state residential education under the IDEA.

Takeaways

Paul G. is the first Ninth Circuit opinion to address exhaustion since the Supreme Court's [Fry decision](#) in 2017. In light of this decision, local educational agencies should carefully scrutinize any ADA or Section 504 claims that appear to seek relief that is fundamentally educational and related to a student's unique needs. Further, a plaintiff may be unable to maintain a civil suit against a local educational agency if there is a dismissal or settlement prior to a final administrative decision.

If you have any questions about this case or special education matters in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our podcast, follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).