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## Ninth Circuit Requires Exhaustion of Administrative Remedies in Sprawling Distance Learning Lawsuit

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**Written by:**

Kyle Raney  
Partner  
Sacramento Office  
kraney@lozanosmith.com

Josh Walden  
Associate  
San Diego Office  
jwalden@lozanosmith.com

Kate Woznick  
Law Clerk  
Sacramento Office  
kwoznick@lozanosmith.com

In a highly anticipated decision, the Ninth Circuit Court of Appeals in *Martinez v. Newsom* (9th Cir. 2022) 46 F.4th 965, recently determined that a class action lawsuit brought by four students and their parents against all school districts in California lacked jurisdiction to be heard in federal district court, was moot in some respects in light of the return to in-person instruction, and that remaining claims against Etiwanda School District and Chaffey Joint Union High School District should be dismissed for failure to exhaust administrative remedies.

**Background**

At the onset of the COVID-19 pandemic, many school districts were forced to shift from in-person instruction to distance learning. In August of 2020, the parents of four students (Plaintiffs) enrolled in Etiwanda School District and Chaffey Joint Union High School District filed a class action lawsuit on behalf of “all special needs students and their parents in California” alleging, among other things, that every school district in California failed to adequately accommodate special education students assigned to distance learning, thus denying them a free appropriate public education (FAPE).

The Plaintiffs filed suit pursuant to the Individuals with Disabilities Education Act (IDEA) and the Fourteenth Amendment against hundreds of school districts, various state agencies including the California Department of Education, and Governor Gavin Newsom (Defendants). The Plaintiffs sought remedies including: (1) a declaration that the Defendants had violated the IDEA; (2) an injunction requiring the Defendants to immediately reassess special education students assigned to distance learning and/or return them to in-person instruction; and (3) an injunction ordering the Defendants to provide special education students with various educational services, including compensatory education. On November 24, 2020, the district court dismissed all of Plaintiffs’ claims for failure to exhaust administrative remedies, denied Plaintiffs’ leave to amend, and dismissed the case. On December 23, 2020, Plaintiffs appealed to the Ninth Circuit Court of Appeals (“Ninth Circuit”).

The Ninth Circuit’s decision addressed three separate legal principles: (1) standing; (2) mootness; and (3) exhaustion of administrative remedies. The court determined that the Plaintiffs lacked standing to sue the school districts which they did not attend. Additionally, except for compensatory education, declaratory relief, and attorneys’ fees against Etiwanda School District and Chaffey Joint Union High School District, the remaining claims were declared moot because the schools had already returned to in-

person instruction. After addressing these threshold procedural matters, the court turned to exhaustion of administrative remedies.

## Failure to Exhaust Administrative Remedies

On the remaining claims against Etiwanda School District and Chaffey Joint Union High School District, the Ninth Circuit determined that Plaintiffs failed to exhaust their administrative remedies, as is required prior to filing federal claims under the IDEA. Plaintiffs argued that they were not required to exhaust administrative remedies under the IDEA for three reasons: (1) they sought systemic or structural relief; (2) it was improbable that adequate relief could be obtained by pursuing administrative remedies; and (3) exhaustion would be futile. In addressing the systemic exception to the IDEA, the court concluded that a plaintiff must, at minimum, identify an agency decision, regulation, or other binding policy that caused his or her injury, not simply reframe an act of negligence to avoid exhaustion by “describing problems as broad and far reaching.” Additionally, because Plaintiffs sought relief for denial of a FAPE, they were required to exhaust administrative remedies even though some of their claims were based on the Fourteenth Amendment. Lastly, regarding futility, Plaintiffs argued that exhaustion of their claims before the Office of Administrative Hearings (OAH) would be futile because one of the named Plaintiffs whose complaint was dismissed by the district court, had his complaint dismissed by OAH as well once he initiated the administrative process. Plaintiffs submitted evidence of OAH’s dismissal for the first time on appeal and, because the court can only consider the record that was submitted at the district court level, the Appellate Court expressed no opinion regarding whether Plaintiffs’ exhaustion would be futile.

## Takeaways

The Ninth Circuit’s decision in *Martinez v. Newsom* confirms the importance of complying with procedural requirements when alleging a denial of FAPE, particularly the need to exhaust administrative remedies. This holding will hopefully discourage would-be plaintiffs from filing costly and time-consuming class actions under the IDEA.

If you have any questions about *Martinez v. Newsom*, please contact the author 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](#).

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