

SELECTED DEVELOPMENTS IN SPECIAL EDUCATION LAW JUNE, 2023

EDUCATION LAW YEAR IN REVIEW
THURSDAY, JUNE 29, 2023
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Free, Appropriate Public Education Basics

- 20 U.S.C. § 1401(9)
- Board of Education v. Rowley, 458 U.S. 176 (1982) (“some educational benefit”)
- Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017) (“appropriately ambitious” programs, “challenging objectives,” “cogent and responsive explanation” for school authorities’ decisions)

Free, Appropriate Public Education Developments

- Doe v. Newton Pub. Schs., 48 F.4th 42 (1st Cir. Sept. 2, 2022) (therapeutic school required, but denying reimbursement for residential services)
- Falmouth Sch. Dep't v. Doe, 44 F.4th 23 (1st Cir. Aug. 9, 2022) (reading methodology did not address student's orthographic processing needs)

Least Restrictive Environment and Related Services Basics

- 20 U.S.C. § 1412(a)(5)(A)
- 34 C.F.R. §§ 300.114-.120
- *Oberti v. Board of Educ.*, 995 F.2d 1204 (3d Cir. 1993) (requiring placement in general education classroom with supplementary aids and services)
- *Sacramento Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994) (affirming placement in general education setting with accommodations)

Least Restrictive Environment and Related Services Developments

- Knox Cnty., Tenn. v. M.Q., 62 F.4th 978 (6th Cir. Mar. 17, 2023) (stressing progress that student made in inclusive setting with supports)
- R.F. v. Board of Educ. of the City of Chi., No. 22-cv-2608, 2022 WL 1805099 (N.D. Ill. June 2, 2022) (enforcing transportation provisions in IEP that included air conditioned bus with shared nurse, and aide; rejecting alternative of homebound services)

Due Process Hearings Basics and Developments

- Basic Provisions: 20 U.S.C. § 1415(f), 34 C.F.R. §§ 300.500, et seq.
- New Development: Letter to Zirkel, <https://sites.ed.gov/idea/files/osep-policy-letter-22-04-to-zyrkel-04-15-2022.pdf> (OSEP Apr. 15, 2022) (complaint sufficiency, hearing rights)

Administrative Exhaustion and Damages Claims Basics

- Smith v. Robinson, 468 U.S. 992 (1984) (finding equal protection and Section 504 claims supplanted by special education law), *superseded by statute*,
- 20 U.S.C. § 1415(l) (rights under other laws are not supplanted, “except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.”)
- Fry v. Napoleon Cmty. Schs., 580 U.S. 154 (2017) (IDEA exhaustion not required for non-FAPE claims)

Administrative Exhaustion and Damages Claims Developments

- *Perez v. Sturgis Pub. Schs.*, 143 S. Ct. 859 (Mar. 21, 2023) (exhaustion is not required for damages claims)
- *Heston v. Austin Indep. Sch. Dist.*, No. 22-50295, --- F.4th ----, 2023 WL 4117918 (5th Cir. June 22, 2023) (no preclusion bar from earlier final dismissal of damages claim against district)

More on Administrative Exhaustion and Damages Claims

- Pennington v. Flora Cmty. Unit Sch. Dist. No. 35, No. 3:20-CV-11-MAB, 2023 WL 348320 (S.D. Ill. Jan. 20, 2023) (pre-Perez case noting failure to support exhaustion defense; upholding ADA, Section 504, and tort law claims alleging peer and staff bullying)
- C.B. v. Board of Educ. of City of Chi., 624 F. Supp. 3d 898 (N.D. Ill. Aug. 26, 2022) (denying motion to dismiss retaliation and other claims against former school district lawyer and school district; granting dismissal as to various additional claims)

Questions, Comments

- Thank you!