

U.S. Supreme Court rules for student in IDEA exhaustion of remedies action

By Shawn A. Nelson

Last week, the U.S. Supreme Court issued a decision in favor of E.F., a student with cerebral palsy who sought permission to bring her service dog – Wonder – with her to kindergarten. Wonder helped E.F. “live as independently as possible,” which included assistance with retrieving dropped items, helping her balance, opening and closing doors, turning on and off lights, and helping her transfer to and from the toilet. The school districts argued that, because E.F.’s individualized education program (IEP) provided her with a one-on-one human aide throughout the day, Wonder was unnecessary. E.F.’s parents ultimately filed a lawsuit claiming disability discrimination under Title II of the Americans with Disabilities Act (ADA) and §504 of the Rehabilitation Act (§504).

The school districts sought to dismiss the claims, arguing that the Individuals with Disabilities Education Act (IDEA) required E.F. to exhaust the IDEA’s administrative procedures before filing a federal lawsuit under Title II of the ADA and §504. The lower courts agreed with the school districts and E.F. appealed.

The U.S. Supreme Court first noted that the IDEA protects only children and concerns their schooling, while Title II of the ADA and §504 “cover people with disabilities of all ages, and do so both inside and outside schools.” The Court concluded that the “[e]xhaustion of IDEA’s administrative procedures is unnecessary where the “gravamen” [i.e., the crux or essence] of the plaintiff’s suit is something other than the denial of the IDEA’s core guarantee of a [free appropriate public education,] FAPE.” The Court provided two “clues” to determine the gravamen of a suit:

- 1) Could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school – say, a public theater or library?
- 2) Could an *adult* at the school – say, an employee or visitor – have pressed essentially the same grievance?

If the answer to these questions is yes, it is unlikely that the suit concerns a denial of a FAPE (unless such a denial is expressly alleged in the suit). If the answer is no, the suit likely concerns the denial of a FAPE (even if it does not expressly use the term).

The Court noted a final factor that may determine the gravamen of a suit: whether the plaintiff has previously pursued IDEA administrative remedies. If so, this may be strong evidence that the suit actually concerns the denial of a FAPE. The Court remanded the case to the Sixth Circuit Court of Appeals to determine whether E.F. invoked IDEA’s administrative procedures, and whether such an act determines the gravamen of the lawsuit.

Transgender Update

The Trump administration has withdrawn guidance addressing bathroom access for transgender students. We will provide an update on this withdrawal and its implications at our upcoming School Leaders Series Spring Seminar.

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UPCOMING EVENT

- Marshall & Melhorn’s School Leaders Series

March 29, 2017
8:00am-11:45am

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