

# Two Bites at the Apple? Tips to Avoid Excessive Litigation following *Fry* & *Perez*

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# 504 and IDEA



504 is a non-discrimination statute which requires **reasonable accommodations**



IDEA is designed to provide special education services **(specialized instruction)** to students who need the services in order to make reasonable progress

# 504 & IDEA: What can Courts award?

IDEA: equitable relief

504: monetary damages (i.e.: compensatory damages)



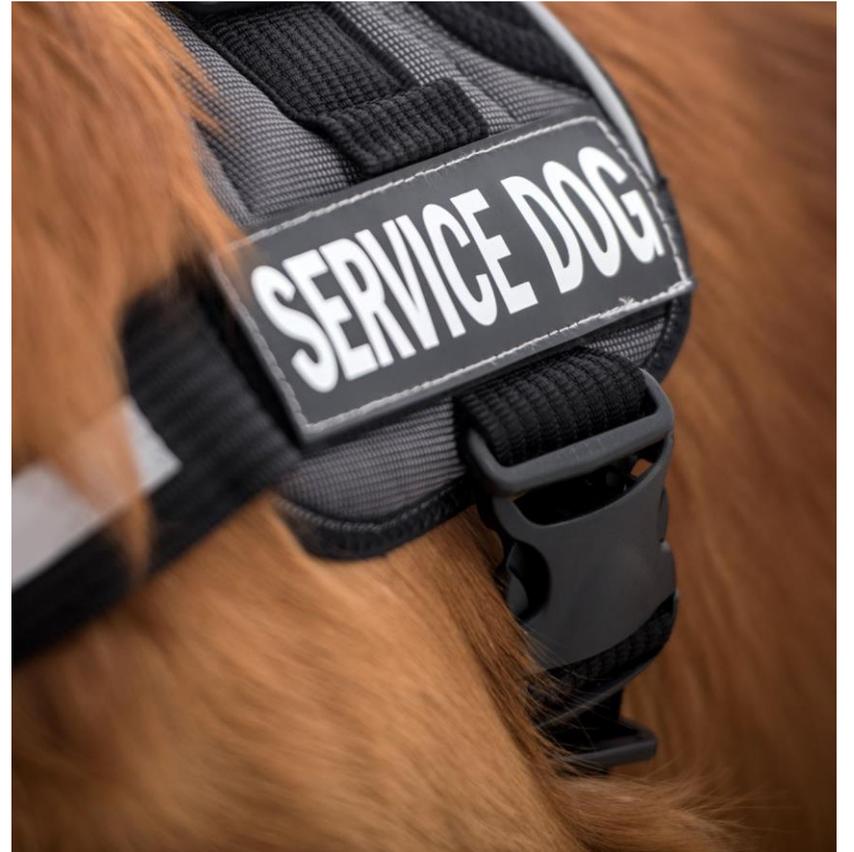
## Quick Review: 2 Key US Supreme Court Decisions

- *Fry v. Napoleon Community Schools, 137 S.Ct. 743 (2017) – unanimous decision*
- *Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023) – unanimous decision*

# *Fry v. Napoleon Community Schools, 137 S.Ct. 743 (2017)*

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- Parents of a child with cerebral palsy requested school district to allow service dog to accompany the child to kindergarten to enhance her independence.
- IEP team determined the human aide already assisting the child as part of her IEP sufficiently met her needs, and denied the request.



# ***Fry v. Napoleon Community Schools, 137 S.Ct. 743 (2017)***

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- Parents brought a suit seeking monetary damages under Section 504 and the ADA for the school district's failure to accommodate the presence of the service dog.
- Both the trial court and the Sixth Circuit agreed that the case should be dismissed, because when the injuries alleged can be remedied through IDEA procedures or they relate to the specific educational purpose of the IDEA, parents must exhaust IDEA procedures before seeking relief in court.
- This was consistent with other court decisions including those from the Eleventh Circuit

*Fry v.  
Napoleon  
Community  
Schools,  
137 S.Ct.  
743 (2017)*

Supreme Court held:

IDEA's "exhaustion rule **hinges on whether a lawsuit seeks relief for the denial of FAPE.** If a lawsuit charges such a denial, the plaintiff cannot escape §1415(l) merely by bringing her suit under a statute other than IDEA...But if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required."

The Court proposed another test: if the claim would be viable against another public entity then it probably does not involve FAPE and does not require exhaustion.

*Perez v.  
Sturgis Public  
Schools, 143 S.  
Ct. 859 (2023)*

- 23-year-old deaf student, thought he would graduate but learned at last minute he would only get certificate of completion
- Filed due process hearing request, but settled before hearing
- Subsequently filed suit in district court which was dismissed for failure to exhaust administrative remedies
- Appeal to 6<sup>th</sup> Cir: “The crux of Perez's complaint is that he was denied an adequate education.” Upheld dismissal by trial court.

# ***Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023)***

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- **Unanimous Decision by Supreme Court that Parents Could Not Obtain Monetary Damages under IDEA and Therefore No Need to Exhaust Administrative Remedies**
- **Question Still As to Whether Claim for Relief that is Available under IDEA Must be Exhausted Before Monetary Claims or Skip IDEA entirely if all they want is Money**

**So Now  
What? What  
are Courts  
Doing Since  
*Perez?***

***Lartigue v. Northside  
Independent School  
District, 86 F. 4<sup>th</sup> 689 (5<sup>th</sup>  
Cir. 2023)***

- Student was only hearing impaired student at her high school
- Filed a due process complaint alleging school failed to accommodate her per her IEP



**Lartigue v.**  
**Northside**  
**Independent**  
**School District,**  
**86 F. 4<sup>th</sup> 689 (5<sup>th</sup>**  
***Cir. 2023)***

- Claims included failing to have 2 interpreters available at all times to ensure one was always available; failing to provide closed-captioning for videos shown in class; providing counseling services to student in open hallways, etc.
- School District prevailed in due process complaint

**Lartigue v.  
Northside  
Independent  
School District,  
86 F. 4<sup>th</sup> 689 (5<sup>th</sup>  
Cir. 2023)**

- Student then filed suit in District Court, alleging violations of Title II of the ADA, Section 504, and the US and Texas Constitutions
- Did not include IDEA claim in her District Court Complaint
- Sought compensatory damages (\$\$\$), which are unavailable under IDEA

*Lartigue v.*  
*Northside*  
*Independent School*  
*District, 86 F. 4<sup>th</sup> 689*  
*(5<sup>th</sup> Cir. 2023)*

- September of 2022 – District Court dismissed ADA claim, finding that Lartigue did not have a standalone claim under ADA because the gravamen of her complaint was the denial of FAPE
- Then. . . March 2023 – US Supreme Court issued *Perez* ruling

*Lartigue v.*  
*Northside*  
*Independent*  
*School District,*  
*86 F. 4<sup>th</sup> 689 (5<sup>th</sup>*  
*Cir. 2023)*

- November of 2023: 5<sup>th</sup> Circuit Court of Appeals issued ruling that, in light of *Perez*, Lartigue **was not required to exhaust her administrative remedies**
- Recognized that nothing in the IDEA foreclosed her ability to pursue her standalone ADA claim “*even when it is ‘admittedly premised’ on the denial of FAPE*”

**Lartigue v.  
Northside  
Independent  
School District,  
86 F. 4<sup>th</sup> 689 (5<sup>th</sup>  
Cir. 2023)**

- 5<sup>th</sup> Circuit sent case back down to District Court, recognizing that administrative proceedings (i.e.: due process hearings) are non-preclusive, and Lartigue seeks a different form of relief → \$\$\$

# Lartigue - what does this mean?

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- Seems to allow parents who received an adverse IDEA hearing decision to cast it aside and proceed to federal court with claims under other statutes without appealing the IDEA decision
- Can parents raise same issues in federal court [that they lost on in a due process hearing] but now seek compensatory damages?

# Powell v. School Board of Volusia Co., Fla. 86 F. 4<sup>th</sup> 881 (11<sup>th</sup> Cir. 2023)

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- Class action suit alleging violation of minors' rights to a FAPE in violation of the IDEA and ADA
- Plaintiffs sought \$50 million in damages
- Complaint in federal district court dismissed...
- Then *Perez* decision issued

# **Powell v. School Board of Volusia Co., Fla.**

## **86 F. 4<sup>th</sup> 881 (11<sup>th</sup> Cir. 2023)**

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- Plaintiffs' amended complaint alleged claims under Section 504 and Title II of the ADA and sought injunctive relief, compensatory damages, and punitive damages
- Allegations including exclusion of students with disabilities from class through the use of informal tactics such as...
  - Sending children home early
  - Instructing parents to keep their children at home even when not suspended
  - Otherwise removing students from classroom for disciplinary reasons

**Powell v.  
School Board  
of Volusia Co.,  
Fla.  
86 F. 4<sup>th</sup> 881  
(11<sup>th</sup> Cir. 2023)**

- Appellants' overall contention is that the School Board systemically discriminated against students with disabilities by "relying on overtly punitive disciplinary tactics and law enforcement to address behaviors that are known, or should be known, manifestations of the students' disabilities."
- But. . . Don't these sound like IDEA issues??

# **Powell v. School Board of Volusia Co., Fla.** **86 F. 4<sup>th</sup> 881 (11<sup>th</sup> Cir. 2023)**

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- When complaint filed in federal court (pre-*Perez*), precedent required plaintiffs to exhaust administrative remedies (i.e.: IDEA due process hearing) even if complaint sought remedies unavailable under the IDEA, like compensatory damages.
- Consequently, federal district court dismissed complaint

# Powell v. School Board of Volusia County, (11<sup>th</sup> Cir. 2023)

“Specifically, Appellants alleged that the School Board routinely excluded students with disabilities from classroom instruction through the use of informal tactics, such as sending children home early, instructing parents to keep their children home even if they were not suspended, and otherwise removing them from the classroom and, thus, depriving them of an education.”

“When Appellants filed this appeal, Eleventh Circuit precedent applied this exhaustion requirement even to suits seeking remedies unavailable under the IDEA, such as compensatory damages.”

“Given the Supreme Court's recent intervening decision in *Perez v. Sturgis Public Schools*, which directly applies to the Appellants' case, we vacate the district court's order of dismissal and remand the case for further proceedings consistent with the holding in *Perez*.”

# What does resolution of claims look like now?

- Scenario: Parent of non-verbal student with cerebral paralysis files a due process complaint after student suffered injuries while in the care of a 1:1 paraprofessional
- Due process complaint alleges denial of FAPE
- Facts show that student injured in restroom while in paraprofessional's care when he fell on his face and fractured a tooth. Only the para was present
- Following school year, school nurse called parent after student's arm was injured in restroom. Only para was present when student injured. X-rays confirmed arm broken.

***Chavez v. Brownsville Indep. Sch. Dist., 2023 WL 3918987 (5<sup>th</sup> Cir. 2023)***

# What does resolution of claims look like now?

- School District settles “all of the differences, complaints, claims, and causes of action which fall under IDEA without resorting to litigation”
- Parent then files action in federal district court alleging violation of 14<sup>th</sup> Amendment due process rights, as well as rights under ADA under the same set of facts as IDEA due process complaint.
- Parent seeks compensatory damages, equitable relief, and attorneys’ fees

***Chavez v. Brownsville Indep. Sch. Dist., 2023 WL 3918987 (5<sup>th</sup> Cir. 2023)***

# What does resolution of claims look like now?

- District Court dismissed for failure to exhaust administrative remedies. After *Perez*, 5<sup>th</sup> Circuit sent case back to district court, recognizing exhaustion isn't required.
- District Court issued new decision in September of 2023, ultimately finding in school district's favor on all causes of action.
- Student has now appealed back to 5<sup>th</sup> Circuit. . .
- ***Chavez v. Brownsville Indep. Sch. Dist.*, 2023 WL 3918987 (5<sup>th</sup> Cir. 2023)**

# What does resolution of claims look like now?

- Over 6 years since settlement of IDEA claims and ongoing federal court litigation concerning same set of facts under ADA/504.
- How could this have been resolved initially?

***Chavez v. Brownsville Indep. Sch. Dist., 2023 WL 3918987 (5<sup>th</sup> Cir. 2023)***

# Take-Aways from Cases

- Won't parents just seek monetary damages now so they can bypass due process hearings?
- Won't parents raise same IDEA due process issues (even if they lost before the ALJ) in district court, but now seek monetary damages to relitigate the same issues?
- Won't parents file a due process complaint at the same time they file a federal court 504/ADA complaint on same issues, and try to litigate both cases at once?
- So does this mean 2 lawsuits instead of 1?

# But wait. . . .

- Will settlement of ALL claims be more expensive?
- Be aware of parents' complaints of "discrimination," "harassment", "exclusion" and requests for monetary damages and work to resolve those complaints quickly and comprehensively

# What Does this Mean for YOU before a claim?

01

Think section 504 as well as IDEA from the beginning

02

Coordination between special education director, risk management, human resources and insurance

03

It has to start at the school level and not be left to “special ed”

# What Does this Mean for YOU when you suspect a claim?

01

Involve attorneys early

02

Parent files due process complaint – get on top of resolution efforts immediately

03

Settlement is key: need to resolve ALL issues with comprehensive release

