PULLMAN &COMLEY

IDEA Exhaustion is Alive and Well: Applying Fry in Graham v. Friedlander

Education Law Notes

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A Connecticut Superior Court judge has issued what might be the first decision in the country applying the United States Supreme Court's recent test for determining whether a party is required to exhaust the administrative remedies available under the Individuals with Disabilities Education Improvement Act of 2004 ["IDEA"]. The case of Graham, et al. v. Friedlander, et al. was brought by four autistic children and their parents against, in part, a school board as well as a former Superintendent of Schools, Pupil Personnel Director, and Pupil Personnel Administrator. It alleged damages based upon the district's retention of an individual who held herself out as an autism expert to provide educational services to some of the district's autistic students. As it turned out, the individual had perpetrated an elaborate fraud involving forged documents and claims of expertise that were completely chimerical.

As the school defendants' counsel, I moved to dismiss the approximately eighty counts that were brought against them on the ground that the plaintiffs' failure to exhaust their administrative remedies under the IDEA had deprived the court of its subject-matter jurisdiction. In January 2017, the Superior Court granted the motion in its entirety. The plaintiffs then moved to reargue. In part, they claimed that exhaustion would have been futile, in support of which they submitted an affidavit from a clinical psychologist who averred that appropriate services had not been provided, and that as a result, at least two of the minor plaintiffs had lost a "critical window of time" when the students would purportedly have been capable of "accelerating [their] learning trajectory."

On February 22, 2017, prior to oral argument on the Graham plaintiffs' motion, the Supreme Court issued its decision in Fry v. Napoleon Community Schools, in which it set forth a test for determining when disabled students were obligated to exhaust claims under the IDEA. Not surprisingly, Fry became a focal point for the parties' respective arguments in Graham. For example, in seeking to obviate the need for pursuing the IDEA's administrative remedies, the plaintiffs argued that their lawsuit sounded in negligence rather than in special education, going so far as to assert that as a consequence of the fraudulent expert's retention, "the defendants caused the minor plaintiffs to suffer bio-neurologically-based injury." Thus, the plaintiffs reasoned, their case was analogous to a personal injury claim rather than to one arising under the IDEA. The defendants, however, noted that in enumerating the minor plaintiffs' alleged injuries, the plaintiffs had claimed "[a] regression of the progress made to alleviate the symptoms of [Autism Spectrum Disorder, or "ASD"]," as well as a "[l]ack of progress in the symptoms of ASD," and the "[i]nability to communicate effectively," all of which were exactly the sort of claims that the IDEA was designed to redress.

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The court agreed, quoting those allegations from the plaintiffs' Complaint and furthering citing the additional contentions that one of the minor students had purportedly experienced "[r]egression into nonverbal communications," and the "[i]nability to communicate verbally." The court held that all of these claims "relate to the adequacy . . . of the services provided," and thus "are inexorably linked to educational services notwithstanding the [plaintiffs'] efforts to characterize them otherwise." Therefore, "[u]tilizing the Fry framework," the court held that the claims were not the sort that could have been brought against a non-school entity, such as "a public theater or library," or could have been brought by "an adult visitor or employee," two examples the Supreme Court offered in Fry when discussing its formula for determining which cases are susceptible to the IDEA's administrative remedies.

Based upon this application of Fry, the Superior Court held that the plaintiffs' claims "only could be brought against the parties legally responsible for providing educational services to students entitled to educational services tailored to their particularized needs." As such, the plaintiffs' causes of action were subject to the IDEA's administrative remedies, and on July 10, 2017, the Connecticut Superior Court, rendered its decision, affirming its original dismissal of the plaintiff's lawsuit.

What Is The Takeaway?

When the Supreme Court issued its decision in Fry, some were concerned that it would result in litigants circumventing the IDEA's administrative process and instead going directly to court, where they would seek compensatory damages or allege individual liability against district administrators and staff. As the Graham court's decision illustrates, however, the IDEA's exhaustion requirement remains an imposing barrier to direct court actions. Parties are still required to submit to the administrative process those claims that are rooted in a student's educational programming, a mandate that cannot be undercut simply by clever phrasing or by demanding relief – such as compensatory damages – that is not available from a special education administrative hearing officer. If the nature of the injury alleged pertains to or arises from a student's education, then administrative relief remains the requisite remedy.

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