



CASE LAW UPDATE 2022/2023
 RETAINER WORKSHOP APRIL 2023

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CASE LAW UPDATE



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FEDERAL CASES




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Perez v. Sturgis Public Schools

United States Supreme Court (2023): Facts

- Perez, a deaf student, filed suit against Sturgis Public Schools alleging that the District violated IDEA for failure to provide a proper classroom aide for interpreter services and for misrepresenting his academic progress
- District and Perez enter into a settlement agreement before due process hearing – District grants Perez his requested relief
- Following settlement, Perez brings suit in federal court, seeking money damages under the ADA



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Perez v. Sturgis Public Schools

United States Supreme Court (2023): Holding

- Sixth Circuit holds: Perez cannot bring ADA claim before first exhausting administrative remedies
- Supreme Court: Reverse
 - Court looked to IDEA language and held 1) IDEA should not be read to restrict remedies under other laws and 2) exhaustion of administrative remedies is only required when an individual is seeking relief that is available under IDEA
 - Money damages – NOT available under IDEA so Perez did not have to exhaust first.



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What about *Fry v. Napoleon Community Schools*?

"In *Fry*, the Court held that §1415(l)'s exhaustion requirement does not apply unless the plaintiff "seeks relief for the denial of" a free and appropriate public education "because that is the only 'relief'" IDEA's administrative processes can supply. This case presents an analogous but different question—whether a suit admittedly premised on the past denial of a free and appropriate education may nonetheless proceed without exhausting IDEA's administrative processes if the remedy a plaintiff seeks is not one IDEA provides."

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Perez v. Sturgis Public Schools

Aftermath and Implications for Districts

- 1. When negotiating settlement agreements, districts need to consider and address potential Section 504 and ADA claims
- 2. May create more costly settlement agreements
- 3. Global settlements – releasing all claims related to issue – may become more common



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Perez v. Sturgis Public Schools

Aftermath and Implications for Districts

- 4. More litigation? Potentially...
 - Families may bring due process hearing request and federal lawsuit simultaneously
 - Federal litigation is not faster and it is not less costly
 - While parents may recognize this as a potential avenue under *Perez*, they may not be inclined to take it
 - Due process hearings are more accessible and efficient



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Facts

- A young student with autism, M.Q., experienced challenges in communication skills, social/emotional interactions, and skills related to school routine and staying on task
- For kindergarten, the District wanted to place M.Q. in a general education classroom for the non-academic portions of the school day and a self-contained classroom for the academic portions
- M.Q.'s parents said no – wanted M.Q. in general education classroom the full day with appropriate aids and services
- M.Q. had made progress in general education preschool and done well



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Facts

- District argued: placement in self-contained would be appropriate given its slower pace and opportunities for play
- Parents brought due process hearing request alleging
 - 1) placement in self-contained classroom would violate IDEA's LRE requirement and
 - 2) violations of Section 504 and the ADA



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Holding

- Due Process Hearing:
 - Placing M.Q. in self-contained program would deprive him of his right to be educated in the LRE.
 - Found Section 504 and ADA claims to be duplicative
- District court:
 - Affirmed LRE determination
 - Overruled M.Q.'s objections related to 504 and ADA claims – no finding of discrimination when crafting IEP



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Holding

- District took issue with the district court's use of M.Q.'s progress reports from the general education preschool setting – arguing that there was too much reliance
 - Sixth Circuit: "progress report scores are consequential data points—not only because they represent M.Q.'s ability to make progress under his IEP, but also because his lead teacher assigned those scores."
 - Teacher is most familiar with Student's classroom performance
 - While not the sole measure of progress, ALJ and lower courts found them persuasive



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Holding

- District argues that staff testified: services M.Q. needs to be able to make progress cannot be provided in general education setting full-time
 - Sixth Circuit: "[District's] argument sounds a lot like a claim of impracticality."
 - District cannot prevail with LRE argument simply because mainstreaming is impossible, impracticable, counterproductive...



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Knox Cnty., TN v. M.Q.

United States Court of Appeals (Sixth Circuit) (2023): Holding

- District could not explain why M.Q. could not be provided small group instruction in the general education setting – only claimed mainstreaming just would not work
- Sixth Circuit rejected this, affirming the district court's decision.
- For LRE – looked back to Roncker: "whether the educational benefits M.Q. would gain from being mainstreamed would be "far outweighed" by the benefits of the [self-contained] classroom"
- Sixth Circuit : Even though there are obvious benefits to the self-contained classroom, the question remains: **could the services that make the self-contained classroom superior be provided in the general education setting?**
- It might be challenging, but COULD be done. Proposed IEP would force M.Q. into far too restrictive a setting



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Ja. B. v. Wilson Cnty. Bd. of Educ.

United States Court of Appeals (Sixth Circuit) (2023): Facts

- Student struggled with "rage behaviors" and sought therapy for assistance with emotional regulation
- Student moved from Illinois to Tennessee and after a few weeks, Student received first disciplinary referral at new school
- Parents expressed concerns, met with school staff to discuss additional supports and interventions, such as an agenda and local tutoring assistance



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Ja. B. v. Wilson Cnty. Bd. of Educ.

United States Court of Appeals (Sixth Circuit) (2023): Facts


- Student admitted to hospital, Parents communicated this with school
- Later Parents met with school staff to discuss steps towards developing a Section 504 plan or IEP.
- Parents brought a due process hearing request alleging that the District denied Ja.B. FAPE by failing to identify and evaluate him for special education services



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Ja. B. v. Wilson Cnty. Bd. of Educ.
 United States Court of Appeals (Sixth Circuit) (2023): Holding

- ALJ: held that the District did not deny Student a FAPE by failing to identify and evaluate the Student
 - Administrative hearing included testimony regarding developmental trauma, the importance of avoiding rushing to judgment on a student's potential eligibility and the effectiveness of implementing other interventions before developing an IEP
- Federal district court: Overruled Parent's objections and affirmed the ALJ's order




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Ja. B. v. Wilson Cnty. Bd. of Educ.
 United States Court of Appeals (Sixth Circuit) (2023): Holding


- 6th Circuit: affirmed
 - Though Parents argued that the District failed to act despite multiple meetings, the Student's hospitalization and suspensions – the 6th Circuit did not agree
 - Districts may deny a request for an evaluation when it does not suspect a student has one.
 - Further: "we previously have acknowledged that a school did not violate its child-find responsibilities by first attempting other interventions for a student instead of immediately referring for an evaluation"
 - The District did not foreclose the possibility of special education eligibility – just wanted to try a 504 plan first.



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MI CASES



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In Re Student with Disability

Due Process Hearing (9/1/22): Facts

- Student is 13 years old and in 8th grade, eligible for special education services under OHI
- Diagnosed with ADHD, PTSD, ODD
- As part of comprehensive reevaluation, FBA conducted for Student
- Student has long history of noncompliance to avoid work and disengage
- District maintained the following as central components of an FBA: 1.) Defining the problem behavior; 2.) collecting data regarding the antecedents and consequences of the behavior; and 3.) Developing a hypothesis about the function of the behavior



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In Re Student with Disability

Due Process Hearing (9/1/22): Holding

- Central question: Was the FBA appropriate?
- ALJ looked to this rule: "if a functional behavior assessment does not provide sufficient data to reliably determine the functions of a student's serious behaviors, then it does not constitute an appropriate evaluation"
- To conduct FBA, District used a variety of tools/strategies: input from teachers/parents, social worker, review of existing data, review of records, medical diagnosis, classroom observations – thus the FBA was appropriate
- Conducting a functional analysis was not needed because these above measures were enough



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In Re Student with Disability

Due Process Hearing (9/1/22): Facts/Holding

- Student now a 20-year-old graduate of the District
- Specific learning disorder in math and reading, ADHD, PTSD, working memory deficits
- Student had difficulties with reading – out-loud reading in 5th percentile, reading understanding in 50th percentile (3rd-5th grade level)
- Student had limited math ability
- Student eventually put in remedial reading class – It was helping but he did not want to remain there
- Student often cheated on classwork and did not do his work independently



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In Re Student with Disability

Due Process Hearing (9/1/22): Facts/Holding

- Parents allege that District failed to appropriately reevaluate Student when he was not making progress
- ALJ: finds for District
 - Not required to conduct additional comprehensive evaluations
- ALJ also finds that District did not
 - 1) fail to create appropriate postsecondary goals, 2) fail to provide appropriate accommodations or related services, 3) fail to appropriately address Student's behaviors that were impeding his learning, 4) fail to provide Student with assistive technology devices or services



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In Re Student with Disability

Due Process Hearing (10/13/22): Facts

- Student is 19 years old
- Student displayed difficulty communicating in school and did not engage socially with other students
- District transitioned education to target life skills for Student
- Peers in the high school building ages 15-19 – no one above age 19
- Most recent IEP: Team recommended Student work 2-4 hours/week at home for instruction and 4 hours/week instruction at Independent Learning Center
- Parents file due process hearing request, alleging that the at-home transition services denies Student FAPE



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In Re Student with Disability

Due Process Hearing (10/13/22): Facts/Holding

- Parent argued: there is a continuum of transition services that should be considered before an in-home placement
- District argued: Teaching the Student life skills requires him to be able to replicate those skills within the home. No meaningful educational benefit for working on these skills outside of the home and education could not be provided in the same way
- ALJ: Agreed with District
 - "Petitioner did not offer any evidence that Student is able to generalize and transfer skills, such that providing transition services to Student of the ILC rather than at home would confer a meaningful educational benefit with respect to independent living skills"
 - Petitioner did not meet burden to show IEP was not an offer of FAPE



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In Re Student with Disability

Due Process Hearing (3/29/23)

- Student is 14 years old with an emotional impairment
- Student attends a specialized placement school, small class setting designed for EI students
- Student struggled at large middle school in District before being placed in specialized placement – many disciplinary incidents and suspensions
- Student exhibited work avoidance despite targeted adult support
- Mom filed due process hearing request claiming that specialized placement was not appropriate, and Student would succeed in general education setting with 1:1 aide



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In Re Student with Disability

Due Process Hearing (3/29/23)

- Mom argued: general education placement is Student's LRE and with the 1:1 aide – all concerns about the Student would be resolved
- District argued: Student was not equipped to handle the general education setting even with a 1:1 because he had not yet demonstrated success in the specialized program
- District also highlighted the potential detrimental consequences of having a 1:1 aide
- ALJ: Agreed with District and held that specialized placement was appropriate and the Student did not need a 1:1 aide
 - "[...] it is true that an aide can be either helpful or hurtful. There is, however, a time and a place for an aide in the appropriate setting and in the proper circumstances..."



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In Re Student with Disability

Due Process Hearing (12/1/22): Facts/Holding

- Student in 11th grade and 16 years old
- Eligible for special education as Student with EI
- Student engaged in a number of disciplinary issues – resulting in suspensions
- Incident in question: Student involved in altercation with another student, punching and calling each other names. Student's teacher was punched in the shoulder, Student given out-of-school suspension
- Student engaged in what is known as "cheese-necking"
- Parent told District that Student was also diagnosed with Intermittent Explosive Disorder – District told Parent to bring documentation to meeting.



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In Re Student with Disability

Due Process Hearing (12/1/22): Facts/Holding

- MDR meeting held, Parent insisted that the incident was due to Student's Intermittent Explosive Disorder but did not provide any documentation
- Team found: conduct in question was not a manifestation of Student's disability
 - Student displayed ability to control himself
 - Took control of emotions and behavior immediately following incident
 - Showed remorse for hurting teacher
- ALJ found: Parent did not meet burden to establish conduct was caused by or was directly and substantially related to Student's disability and Parent was given adequate notice of IAES



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In Re Student with Disability

Due Process Hearing (12/5/22): Facts/Holding

- Student attended District's School of the Arts
- Parent contacted District inquiring about an IEP for Student
- District began collecting data for the Student – one behavioral services entity wrote a letter indicating that Student was "Severely Emotionally Disabled" with EI and ADHD
- District explained to Parent that first step of process was collecting data and then determining eligibility
- REED meeting held but Parent would not provide consent for evaluation
- She provided an unsigned, "edited" REED document that effectively rewrote the document



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In Re Student with Disability

Due Process Hearing (12/5/22): Facts/Holding

- Multiple, lengthy sessions held to review and revise the REED document
- Parent still did not give consent for evaluation, brought complaint against District
- Parent alleges District violated IDEA by failing to obtain documents from Student's previous school
- District argues: it tried to obtain consent to get the records and Parent never gave it
- ALJ – found for District. The District was prepared to proceed with evaluation, but Parent's refused consent got in the way
- ALJ also found: District precluded from developing an IEP because it could not conduct a full evaluation due to parental refusal



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In Re Student with Disability

Due Process Hearing (8/1/22): Facts/Holding

- Student 14 years old and in 6th grade
- Student struggles with math, vocabulary, reading comprehension and communication skills
- Student rarely attended special education class and Student's family did not utilize all the services offered by the District
- Witness testimony all supported the conclusion that the Student's specific learning disabilities necessitated placement in the cognitively impaired classroom and not the general education setting



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In Re Student with Disability

Due Process Hearing (8/1/22): Facts/Holding

- Father argued that the general education setting would be most appropriate
- ALJ found: placement in cognitively impaired classroom is appropriate – Student needed environment with intensive/maximum support that even a 1:1 could not provide
- Father's desire to see Student meet grade level expectations interfered with what Student needed in intensive setting (understand and master basic skills)
- Father's hope that Student could progress quickly could be viewed as "harmful" according to ALJ – trying to expedite a process of building skills that takes time



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QUESTIONS?



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