Attorney Roundtable: Section 504 & ADA

WHO is Protected?

- Qualified Individual with a Disability
- ADAAA Amendments of 2008
  - Designed to overturn Supreme Court precedent that unduly narrowed the construction of the ADA
  - Clarified that courts must read the definition of "qualified individual with a disability" broadly
  - "Substantial impairment" should not be used to deny coverage
  - More expansive than IDEA, because student must *need special education on account of* her disability

WHAT is Prohibited?

- Exclusion from participation in, be denied the benefits of, or be subject to discrimination under
  - any program or activity receiving Federal financial assistance (504)
    - "Program or activity" – includes local educational agencies
  - Public entity as defined by ADA
    - Also cannot enter into contractual arrangements that discriminate

SCHOOL DISTRICTS ARE COVERED ENTITIES UNDER BOTH SECTION 504 AND ADA

- Virtually all receive federal funds so covered by Section 504
- • Any private schools which receive federal funds, including
- those run by religious organizations, are also covered by
- Section 504, even if receive funds indirectly.
- • Public schools covered by Title II of ADA; private secular
- schools by Title III.
- • School district cannot provide significant assistance to outside
- entities that discriminate against SWD, even if outside
- organization not covered by 504 or ADA.
- • Example of a YMCA program for before and after school

ELIGIBILITY UNDER IDEA, SECTION 504, AND ADA

- IDEA: a student's disability must meet the definition of one of
- several listed disabilities and, as a result, the student must
- require special education services.
- • Section 504 is broader: (A)ny person who:
- • (i) has a physical or mental impairment which substantially limits one or
- more of such person's major life activities,
- • (ii) has a record of such an impairment, or
- • (iii) is regarded as having such an impairment
- • Under 504, don’t need to be receiving special education.
- • All accommodations can be in general education programs.
- • If not eligible under IDEA, must follow process to determine if
- eligible under Section 504.

Differing FAPE Definitions

- For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are ***designed to meet individual educational needs of handicapped persons as adequately as*** the needs of nonhandicapped persons are met and (ii) are based upon adherence to regulatory procedures
- 34 CFR 104.33(a)

504 FAPE Requirement

- "A focus on the particular child is at the core of the IDEA . . . . An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth"
- *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017)

IDEA FAPE Requirement

Section 504 FAPE Obligation

- BUT what do the cases say:
  - "Because a school district's provision of a FAPE under the IDEA meets Section 504 FAPE requirements, a claim predicated on finding a violation of the Section 504 FAPE standard will fail if the IDEA FAPE requirement has been met. provision of IDEA FAPE satisfies 504 FAPE."
  - *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013)
  - *Estate of Lance v. Lewisville Indep. Sch. Dist.*, 743 F.3d 982 (5th Cir. 2014)

McEntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902 (9th Cir. 2020)

Section 504 FAPE Obligation

- FAPE requirements "overlapping but different"
- Compare services to level provided to individuals without disabilities
- *Regular* or special education
- Can provide 504 FAPE either through Section 504 plan or IEP

Section 504 – Non-FAPE Claims

- "Section 504 claims predicated on other theories of liability under that statute and its implementing regulations, however, are not precluded by a determination that the student has been provided an IDEA FAPE."
  - *K.M. v. Tustin*

Title II – ADA Claims

- Title II imposes no FAPE requirement
- "If the ADA requirements are sufficiently different from, and in some relevant respect more stringent than, those imposed by the IDEA, then compliance with the IDEA FAPE requirement would not preclude an ADA claim."
  - *K.M. v. Tustin,* 725 F.3d 1088 (9th Cir. 2013)

Title II – ADA Claims
Effective Communication Claim

- "A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others."
  - 28 C.F.R. 35.160
- *This imposes a different obligation than IDEA FAPE*

Discrimination Claims
J.N. v. Oregon Dep't of Educ.

- School districts, with knowledge of ODE, fail to provide supports and, as a result, students with disabilities not getting full days of education
- Individual plaintiffs and COPAA sued for equitable relief
- *Court ruled Complaint established standing for class representatives and COPAA as associational plaintiff*

J.N. v. Oregon Dep't of Educ.

- State law establishes presumptive right to same hours of instruction for students with disabilities
- However, state has failed to identify, correct, prevent shortened school days for studebts with behavior
- *These actions and inactions unnecessarily segregate then and deprive them of educational services*

J.N. v. Oregon Dep't of Educ. Claimed ADA/504 violations

- Exclusion from participation, denial of benefit of program
- Unnecessary segregation
- Denial of reasonable modifications to avoid discrimination
  - Develop, implement and revise, as needed, academic and behavioral interventions
- *State of Oregon has obligation to adequately supervise school districts to ensure discrimination is not occurring*

J.N. v. Oregon Dep't of Educ.

- *ADA/504Claims*
  - Exclusion from participation in full school day
    - 28 C.F.R. 35.130(a); 34 C.F.R. 104.4(a)
  - Denial of equal opportunity
    - 28 C.F.R. 35.130(b)(1)(ii); 34 C.F.R. 104.4(b)(1)(ii)
  - Denial of equally effective services
    - 28 C.F.R. 35.130(b)(1)(iii); 34 C.F.R. 104.4(b)(1)(iii)
  - Unnecessarily providing separate services
    - 28 C.F.R. 35.130(b)(1)(iv); 34 C.F.R. 104.4(b)(1)(iv)
  - Aiding or perpetuating discrimination
    - 28 C.F.R. 35.130(b)(1)(v); 34 C.F.R. 104.4(b)(1)(v)

A.G. v. Paradise Valley Unified Sch. Dist.

815 F.3d 1195 (9th Cir. 2016)

- Parents did not waive rights under 504/ADA when releasing IDEA claims (but see more recent cases)
- What supports are needed to ensure that the child with disabilities has the same opportunity as the child without disabilities?
- Was there a violation of an implementing regulation?
- Did that violation deny meaningful access?

Volusia County Sch. Bd. Settlement

- USDOJ alleged violation of Title II of ADA
- Alleged routine exclusion of students with autism spectrum disorder by
  - Informal removals – early pick up, telling parents to keep students home w/o formal suspension, otherwise removing them from instruction
  - Formal removals through discipline actions
  - Law enforcement involvement

Volusia County Sch. Bd. Settlement

- USDOJ alleged violation of Title II of ADA
- VCS agreed to amend policies to ensure compliance with ADA
  - Prohibit informal removals
  - System for tracking removals
  - Documentation required for removals
  - Appointment of BSC
  - Training
  - ADA Compliance Officer
  - Reporting requirements
- Settlement agreement available at https://www.justice.gov/opa/press-release/file/1420811/download

R.D. v. Lake Wash. Sch. Dist.

843 F. App'x 80 (9th Cir. 2021)

- R.D. had Section 504 Plan – stay inside when damp or raining and when high temperature below 60, must be supervised by adult
- Parents offered evidence that recess was part of FAPE and includes gross motor activities and supervision
- Disputes of fact: whether R.D. was offered gross motor activities and was supervised

R.D. v. Lake Wash. Sch. Dist.

843 F. App'x 80 (9th Cir. 2021)

- District court focused too narrowly on mainstreaming regulation and did not consider whether school denied meaningful access by denying services available as reasonable accommodation
- Genuine issues of material fact preclude summary judgment
- A reasonable juror could conclude that school knew R.D. needed accommodations and failed to provide them, establishing deliberate indifference

R.D. v. Lake Wash. Sch. Dist.

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- Disputes of fact: whether R.D. was offered gross motor activities and was supervised
- After remand, case voluntarily dismissed, appears to have settled

Rogich v. Clark Cnty. Sch. Dist.

2021 U.S. Dist. LEXIS 197135 (D. Nev. Oct. 12, 2021)

- Provision of research-based reading instruction can be reasonable accommodation to provide meaningful access
- Plaintiffs established need for instruction and failure to offer it was unreasonable
- School district acted with deliberate indifference because it was on notice of the need and refused to provide instruction

Exhaustion of Administrative Remedies

- 20 U.S.C. § 1415(*l*)
  - Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, 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.

Exhaustion of Administrative Remedies

- *Jurisdictional?*

or

- *Claims processing provision*?

- Important because if exhaustion is a claims processing provision, it can be waived

Exhaustion of Administrative Remedies

- *Fry v. Napoleon Cmty. Sch. Dist.*
  - First Supreme Court construction of Section 1415(*l*)
  - Rejected "injury-centered" approach
  - Is the gravamen of the complaint an ADA/504 claim

- The "Clues" in *Fry*
  - First, 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?
  - Second, could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance?

Exhaustion of Administrative Remedies

- *Fry* – open question
  - [W]e leave for another day a further question about the meaning of § 1415(*l*): is exhaustion required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests – here, money damages for emotional distress – is not one that an IDEA hearing officer may award?

Exhaustion of Administrative Remedies – *Perez*

- *Perez v. Sturgis Pub. Sch.* (6th Cir. 2021)
  - At 9 years old Miguel Perez, a deaf student, began attending Sturgis Public Schools
  - School district never provided him with sign language interpretation
  - Months before graduation, school told parents he could not get a diploma
  - Parents filed due process asserting IDEA and ADA/504 claims, at school's request dismissed ADA/504 claims (no jurisdiction)
  - IDEA claims settled
  - ADA/504 claims dismissed because he did not exhaust

Exhaustion of Administrative Remedies – *Perez*

- *Perez v. Sturgis Pub. Sch.*, 143 S. Ct. 589 (2023)
  - "The statute's administrative exhaustion requirement applies only to suits that "see[k] relief . . . also available under" IDEA. And that condition simply is not met in situations like ours, where a plaintiff brings a suit under another federal law for compensatory damages—a form of relief everyone agrees IDEA does not provide."

AJT v. Osseo

- USSC win on standard for discrimination in K-12schools
- ADA and [Section 504] Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts."
- students with disabilities and their families bringing civil rights claims against their school districts for disability discrimination will no longer have to meet the uniquely high and burdensome standard of proving that school officials acted with bad faith or gross misjudgment. This high standard has been applied by several circuit courts of appeals over the last four decades.

COPAA Celebrates Landmark Win for Students with Disabilities Subjected to Discrimination in School

Thursday, June 12, 2025
Posted by: Denise Marshall

COPAA celebrates a major victory for students with disabilities and their families.
The U.S. **Supreme Court ruled 9-0 on June 12, 2025 in *A.J.T. v. Osseo Area Schools*** in favor of the family of a student with a disability, holding that "ADA and [Section 504] Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts." Thanks to today's ruling, students with disabilities and their families bringing civil rights claims against their school districts for disability discrimination will no longer have to meet the uniquely high and burdensome standard of proving that school officials acted with bad faith or gross misjudgment. This high standard has been applied by several circuit courts of appeals over the last four decades.

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