

## Administrative Exhaustion Is a Prerequisite to Claims Under IDEA

By Caitlin Lundquist

To a civil-rights defense attorney confronted with a claim based on the education of a disabled public school student, the plaintiff's duty to exhaust administrative remedies figures prominently in the early determination whether to file an answer or move to dismiss. Although at first blush the applicability or inapplicability of this defense may appear obvious—did they or did they not file and prosecute an administrative petition for due process?—when the plaintiff asserts claims under civil-rights statutes other than the Individuals with Disabilities in Education Act (IDEA), the analysis requires a more thorough assessment of the causes of action asserted and the relief sought.

In furtherance of clear congressional intent to protect the rights of children with special needs, the IDEA guarantees the right to an administrative due-process hearing, as well as the right to appeal the administrative decision by bringing a civil action in state or federal court. In New Jersey, the Department of Education, Office of Special Education Programs (OSEP), is responsible for processing due-process petitions, while the Office of Administrative Law (OAL) conducts the hearing and issues a final decision.

The exhaustion requirement allows for administrative law judges to apply their expertise in special education law, as well as the full development of a factual record prior to court review. It also prevents deliberate disregard and circumvention of the procedures established by Congress, and avoids unnecessary judicial decisions by giving the OAL the first opportunity to make factual findings and legal conclusions intended to remediate any errors in

the education of students with disabilities. Nevertheless, courts may excuse a failure to exhaust where administrative proceedings would be futile or inadequate, the issues are purely legal, the OAL cannot grant the relief request, or where requiring exhaustion would cause severe or irreparable harm.

Exhaustion will not be excused, however, where the procedures in the IDEA may provide some form of relief. The failure to exhaust administrative remedies is a jurisdictional defense. *Batchelor v. Rose Tree Media Sch. Dist.*, 759 F.3d 266, 273 (3d Cir. 2014).

Because the IDEA guarantees students with disabilities the right to a free, appropriate public education (FAPE), causes of action arising under it may be accompanied by claims for monetary damages brought under other statutes prohibiting discrimination based upon a disability or perceived disability, such as Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), Section 1983 of the Civil Rights Act, and the New Jersey Law Against Discrimination (NJLAD). The assertion of other statutory claims alongside a claim invoking the IDEA may complicate application of the exhaustion requirement.

While antidiscrimination statutes may not independently require exhaustion, if the IDEA is capable of remedying the alleged injury, its exhaustion requirement may apply to such claims even if the plaintiff has foregone an IDEA claim. Thus, when IDEA claims are pleaded along with other statutory claims, whether exhaustion is required will depend upon the type of relief sought. If the plaintiff demands relief that is available under the IDEA notwithstanding the absence of an express IDEA claim, courts will prohibit the styling of IDEA claims as



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Section 504, ADA or Section 1983 claims in an effort to circumvent the exhaustion requirement. *Jeremy H. by Hunter v. Mount Lebanon Sch. Dist.*, 95 F.3d 272, 281 (3d Cir. 1996) (plaintiffs cannot evade IDEA's exhaustion requirement "by taking claims that could have been brought under IDEA and repackaging them as claims under some other statute—e.g., section 1983, section 504 of the Rehabilitation Act, or the ADA").

For example, in *M.G. v. W. Caldwell Bd. of Educ.*, 804 F. Supp. 2d 305 (D.N.J. 2011), U.S. District Judge Hayden concluded that summary judgment was appropriate to the extent that the plaintiffs' claim arose under the IDEA, since the plaintiffs had failed to exhaust administrative remedies. Moreover, any IDEA claim would not have been cognizable since the plaintiffs sought only compensatory and punitive damages, which the

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Third Circuit has established cannot be provided by the IDEA. The court further held that to the extent the plaintiffs had raised a claim under the Rehabilitation Act, such claim "recapitulate[d] their IDEA claim" and therefore exhaustion was required.

In contrast, Judge Cooper held in *D.G. v. Somerset Hills Sch. Dist.*, 559 F.Supp.2d 484 (D.N.J. 2008), that since the plaintiffs asserted causes of action under the IDEA, Section 504, the NJLAD, and the Fourteenth Amendment, but limited their requested relief to compensatory and consequential damages—which are not available under the IDEA—they were not required to exhaust administrative remedies available under the IDEA. Of course, notwithstanding that result with respect to exhaustion, like in *M.G.*, the court dismissed the IDEA claim based upon abundant case law, concluding that monetary damages do not constitute appropriate relief under the IDEA.

The Appellate Division has recognized in an unpublished opinion that where a plaintiff's "primary relief is firmly within the orbit of the IDEA," exhaustion is required "before engaging litigational machinery for remedies that may then, arguably, lie outside of the IDEA." *G.S. ex rel. T.S. v. Rumson Bd. of Educ.*, 2010 WL 1753270 (May 3, 2010), \*8. In *G.S.*, the court held that the exhaustion requirement is limited to claims for "relief that is concurrently available under the IDEA," and prohibits plaintiffs from "taking claims that could have been brought under the IDEA and repackaging them as claims under some other statute such as § 1983, the RA, the ADA, or the LAD." Since the plaintiffs primarily demanded relief available under the IDEA, the Appellate Division determined that the trial court properly dismissed not only their federal claims, but also their NJLAD claim, for failure to exhaust administrative remedies.

In certain instances, the classification of a student as eligible for special education will not be dispositive on the applicability of the exhaustion requirement. In *Hornstine v. Twp. of Moorestown*, 263 F.Supp. 2d 887 (D.N.J. 2003), the plaintiff was a student with a disability but did not assert any claim arising under the IDEA. Rather, she sought to enjoin the retroactive application of a policy change permitting multiple valedictor-

ians, which she alleged was discriminatory in violation of the ADA, Section 504 and the NJLAD. Thus, she did not seek relief that could be provided by the IDEA; nor did the defendants argue that her alleged harm could be in any way addressed by the IDEA. There was also no dispute that she had received the free and appropriate public education to which she was entitled as a student with a disability.

In fact, when the plaintiff in *Hornstine* filed an emergent due-process petition, the OSEP declined to process it because her discrimination claims did not concern any of the rights guaranteed by the IDEA, thereby establishing that administrative proceedings would have been futile or inadequate, and the OAL could not have granted relief. Nevertheless, the court reiterated that "in cases in which it appears that a plaintiff has cloaked an IDEA claim as an ADA, Rehabilitation Act, or Section 1983 action in an effort to avoid application of the IDEA's distinct exhaustion requirement, courts will require that plaintiff exhaust the state administrative remedies mandated for IDEA claims."

The court appeared to take an even more expansive view of exhaustion in the unpublished decision of *A.H. ex rel. M.H. v. N.J. Dep't of Educ.*, No. 05-3307, 2006 WL 3359644 (D.N.J. Nov. 20, 2006). Recognizing that plaintiffs may not circumvent the exhaustion requirement by pleading "repackaged" IDEA claims under another statute, the court further explained that "a plaintiff cannot demand relief not available under the IDEA, i.e., monetary damages, where the typical relief under the IDEA would adequately remedy the situation, in an effort to avoid exhaustion." In other words, exhaustion should be required where the relief available under the IDEA would sufficiently address the alleged harm, even if the plaintiff has demanded both damages and injunctive or declaratory relief. Therefore, each claim must be analyzed separately to ascertain whether it explicitly or implicitly seeks relief available under the IDEA and, if so, exhaustion must be enforced.

Most recently, the Appellate Division decision of *J.T. v. Dumont Pub. Sch.*, No. A-2424-12T1, 2014 WL 6607946 (App. Div. Nov. 24, 2014) (approved for publica-

tion), established that when the alleged discrimination or failure to accommodate supporting an NJLAD claim relates to the manner in which educational services were provided, the provision of a FAPE as required by the IDEA satisfies a school district's antidiscrimination and accommodation obligations under the NJLAD. Accordingly, even if a court were to reject the argument that NJLAD claims seeking relief also potentially available under the IDEA should be dismissed for failure to exhaust, as the Appellate Division held in *G.S.*, defense counsel should cite *J.T. v. Dumont* in an attempt to stay the litigation of such claims pending an administrative decision regarding whether FAPE was provided. If unsuccessful in an attempt to stay the matter and force the plaintiff to seek a FAPE determination in the OAL, defense counsel should simply argue in the court presiding over the claim that the school district met its obligation to provide FAPE and therefore complied with not only the IDEA, but also the antidiscrimination and accommodation requirements of the NJLAD. Conversely, of course, counsel for the plaintiff should argue that the school district denied FAPE and thereby, pursuant to *J.T.*, violated not only the IDEA, but also the LAD.

While determining whether to raise a failure-to-exhaust defense will sometimes lend itself to a straightforward conclusion, recent court decisions provide instructive guidance when the analysis becomes more complex due to the assertion of multiple statutory claims, which may seek a combination of damages and declaratory or injunctive relief. Practitioners representing parents or school districts in IDEA and disability discrimination actions should be cognizant of the need to carefully and thoroughly review the implications of each of the plaintiff's legal and factual allegations, and the relief that is both requested and available for each claim, in order to ensure a favorable outcome with regard to an exhaustion defense. ■

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