

Exhaustion of Administrative Remedies

IDEA and California Law

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Goals

- Implications of Perez v. Sturgis
- When Exhaustion is Required
- What Satisfies Exhaustion
- Exceptions to Exhaustion

When Is Exhaustion Required?

- “Gravamen” of a federal claim “seeks relief for the denial of a FAPE”
- Fry Factors:
 - Could plaintiff bring same claim for conduct at another public facility?
 - Could adult at school bring same grievance?
 - Did plaintiff previously pursue IDEA’s administrative remedies?

How has the 9th Circuit Applied *Fry*?

Exhaustion Required

- Seek “specially designed instruction.”
McIntyre
- Seek “core components” of a FAPE—I:I
aide. *D.D. v. LAUSD*
- Seek “particular kind of school.” *Paul G.*

Exhaustion **Not** Required

- Seek generally applicable accommodations, such as:
 - Quiet location for exam
 - Extra time on exam
 - Compliance with emergency health protocol. *McIntyre*
 - De-escalation responses to behavioral disabilities. *C.B. v. MVUSD*

When is Exhaustion Required? (California Claims)

- IDEA exhaustion rule applies only to *federal* claims. 20 U.S.C. § 1415(l)
- But California law requires “if an administrative remedy is provided by statute”
 - No published decision on point
 - Contra Costa County Superior Court twice applied *Fry* test
 - Del Norte County Superior Court applied *Fry* test

Perez v. Sturgis Public Schools (2023)

- SCOTUS held an ADA/504 suit premised on FAPE denial may proceed without exhausting if the remedy a plaintiff seeks is not one the IDEA provides (i.e., damages).
- Very few California cases applying *Perez* so far
- Monitoring for impact on students who have settled due process complaints
 - See, e.g., *D. D. v. Los Angeles Unified Sch. Dist.*, 18 F.4th 1043 (9th Cir. 2021) (en banc), cert. granted, judgment vacated, 143 S. Ct. 1081, and abrogated by *Perez*, 598 U.S. 142.

What Satisfies Exhaustion?

- Due Process Proceeding
 - Always satisfies exhaustion
 - Must obtain a final ruling (*Paul G*)*
 - Must be aggrieved by order
- Complaint Resolution Process (CRP)
 - Must challenge unlawful “binding” policies. Unclear whether generally applicable practices viable.
 - Some courts conflate with “systemic” exception
 - May have to seek reconsideration

Complaint Resolution Process (CRP)

- Filed directly with CDE
- CDE investigates and completes investigation report within 60 days
 - Usually delays commencing investigation
 - Will only investigate allegations within one year
 - CDE does not conduct site visits
 - Use inadequate sampling protocols
- Must request reconsideration to:
 - Address new evidence, changed circumstances, fresh legal arguments, or errors/omissions of fact/law
- Must be aggrieved by report

Unlawful Policies and Generally Applicable Practices

- Often conflated with systemic exception—must implicate every part of program (*Doe v. Arizona; Hoeft*)
- Courts have interpreted *Martinez v. Newsom* to require identification of a written school district policy.
- Unclear whether generally applicable practices can imply binding policy
- Must allege some deliberate act—more than mere failure or negligence (*Student A. v. SFUSD; Martinez v. Newsom*)

When Exhaustion is Excused

- Seeking Non-IDEA Relief (*Perez v. Sturgis Pub. Sch.*, 598 U.S. 142 (2023))
- 4 Possible Exceptions Derived from IDEA House Report
 1. Policies and Generally Applicable Practices Contrary to Law
 2. Systemic Problem
 3. Futility
 4. Emergency

Systemic Exception

Requires Program Restructuring

- Conflated with unlawful policies/practices exception
- Presents legal questions ALJ can't address
- 9th Circuit has never applied
- Must touch every aspect of the special education system
- Second circuit has applied more liberally

Integrity of Admin Process

- Failure to appoint impartial ALJs. (*Heldman v. Sobol*)
- Failure to provide appropriate complaint resolution procedures. *J.S.*



Systemic Exception (California law)

- Construed more liberally—judge may decide not to follow federal exhaustion doctrine
- Sometimes exhaustion excused because admin tribunal lacks jurisdiction
 - *Knoff*
 - Venice Town Council
 - *Torres v. Torlakson*

Futility

- Also conflated with systemic and unlawful policies/practices exception
- Key question is whether OAH can provide some uncertain level of “appropriate” relief
 - *M.C. v. Los Angeles USD*
- Plaintiffs should exhaust CRP process to show CDE’s unwillingness to act
 - See *Student A. v. Berkeley USD*

Emergency Exception

- Only 3d Circuit has analyzed—found support from leg. history
- Must show:
 - Failure to take immediate action adversely affects child's mental/physical health
 - Preliminary showing of serious and irreversible damage
- Academic regression not sufficient
- Akin to Stay Put Exception. *N.D. v. Hawaii*, 600 F.3d 1104 (9th Cir. 2010)