TRANSFORMING SPECIAL EDUCATION LITIGATION: THE MILESTONE OF *PEREZ V. STURGIS PUBLIC SCHOOLS*

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ABSTRACT

In March 2023, the Supreme Court issued a landmark decision in Perez v. Sturgis Public Schools*, which held that individuals seeking compensatory damages under federal anti-discrimination laws, like the Americans with Disabilities Act, no longer need to satisfy the administrative exhaustion requirement in the Individuals with Disabilities Act ("IDEA"). Under IDEA, all students with disabilities are entitled to a free appropriate public education, which means that students with disabilities are entitled to individualized education services that meet their needs. In* Perez*, the plaintiff, Miguel Luna Perez, was a deaf student who alleged that the Sturgis Public Schools discriminated against him by not providing proper accommodations, such as a qualified sign language interpreter in his classes. The district court and the Sixth Circuit dismissed the plaintiff's claims because of an IDEA provision that requires the plaintiff exhaust all administrative procedures before seeking relief in court. The Supreme Court reversed the Sixth Circuit decision, reasoning that the exhaustion requirement did not apply to Perez as he sought compensatory damages, which are unavailable under IDEA. This ruling means that families can now directly hold schools financially accountable for IDEA violations. This Note discusses* Perez*'s profound impact on the special education landscape. The greater accessibility for families to litigate will ideally lead to greater accountability and IDEA compliance as schools strategize to avoid litigation and paying costly compensatory damages. Although this decision is a victory*

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for students with disabilities, a major downside of Perez *is that paying compensatory damages increases schools' financial strain and may hinder their abilities to address systemic issues in their special education framework. To ensure that school districts can properly address structural issues and adequately support students with disabilities post-*Perez*, this Note argues for clearer IDEA guidelines and robust monitoring systems. There are many uncertainties that follow in the wake of* Perez*, but the decision has the potential to encourage much-needed progress in special education services nationwide.*

TABLE OF CONTENTS

INTRODUCTION

In March 2023, the United States Supreme Court delivered a landmark decision for students with disabilities. The Court unanimously ruled in *Perez v. Sturgis Public Schools* that a student with a disability is not required to

exhaust the administrative due process procedures under the Individuals with Disabilities Education Act ("IDEA") before seeking monetary damages under the Americans with Disabilities Act of 1990 ("ADA") or other federal antidiscrimination laws.[1] Under IDEA, students with disabilities are required to receive a "free and appropriate public education," but money damages are not available as relief.[2]

IDEA mandates that students with disabilities receive a free appropriate public education ("FAPE"), which includes providing special education and related services from preschool through secondary school that meet state educational agency standards and conform with the student's individualized education program ("IEP").[3] An IEP is a written statement developed by a local educational agency, like a school district. It is a collaboration between a child's parents and school personnel to identify a student's needs and to develop a plan to achieve educational goals.[4] Parents are intended to play "a significant role" in the IEP process.[5] IEPs also prescribe the types of supplementary services the student will receive, along with an explanation of whether the child is able to participate in regular classes with nondisabled children.[6]

Three main federal laws exist to protect children with disabilities: IDEA,[7] the ADA,[8] and section 504 of the Rehabilitation Act of 1973 ("section 504").[9] Both IDEA and section 504 confer a right to FAPE, though the two have distinct conceptions of the meaning.[10] Though the ADA does not contain a FAPE obligation, its regulations are mandated to be consistent with all section 504 regulations, so it does not undermine section 504's FAPE obligation.[11] The ADA was enacted twenty-five years after IDEA to "provide a clear and comprehensive national mandate" to address pervasive discrimination against individuals with disabilities in areas such as

1. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 150–51 (2023).
2. *See id.* at 147.
3. 20 U.S.C. § 1401(9).
4. *Id.* § 1414(d).
5. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 524 (2007) (citation omitted).
6. 20 U.S.C. § 1414(d). For a list of the specific contents of an individualized education program ("IEP"), see 20 U.S.C. § 1414(d)(1)(A)(i)(I)–(VI).
7. 20 U.S.C. § 1400(a)–(d).
8. 42 U.S.C. § 12101(a)–(b).
9. 29 U.S.C. § 794(a)–(d).
10. *Compare* 20 U.S.C. § 1401(9), *with* 34 C.F.R. § 104.33 (The Individuals with Disabilities Education Act's ("IDEA") free appropriate public education ("FAPE") obligation focuses on providing students with an IEP and proper accommodations while section 504 of the Rehabilitation Act ("section 504") ensures that students with disabilities' needs are met as adequately as their peers without disabilities, introducing a more comparative aspect to the concept).
11. *See* 42 U.S.C. § 12133; 28 C.F.R. § 35.103(a).

"employment, housing, public accommodations, [and] education . . . ."[12] The ADA mandates that employers and public entities make reasonable modifications to their policies or facilities to accommodate individuals with disabilities. Section 504 is an antidiscrimination statute that also protects individuals with disabilities from being denied benefits or excluded from participation in any program receiving federal funding, including public schools.[13]

IDEA, the ADA, and section 504 all define "disability" differently, although there are overlaps among them. In this Note, "students with disabilities" refers to students who qualify under IDEA. IDEA defines a student with a disability as a child, aged between three to twenty-one, "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities" who thereby "needs special education and related services."[14] The ADA's definition for "disability" is more stringent, as an individual must have "a physical or mental impairment that substantially limits one or more major life activities" and a record of the impairment.[15] Section 504 incorporates part of the ADA definition, but requires that an individual with a disability have a physical or mental impairment that "results in a substantial impediment to employment" and can benefit from vocational rehabilitation services.[16] The ADA and section 504 operate similarly to prohibit discrimination on the basis of disability in programs that receive federal funding.[17] So, although IDEA and ADA both provide relief for individuals with disabilities, they function differently; the ADA addresses broader discrimination in major areas of public life like employment and public accommodations, while IDEA is focused only on special education services in public education.[18] Importantly, the different "disability" definitions mean that a person who receives special education services under IDEA does not necessarily have a disability recognized under the ADA and section 504.[19]

In *Perez v. Sturgis Public Schools*, Miguel Luna Perez, a deaf student in Michigan, faced significant challenges in his education. Perez attended schools in the Sturgis Public School District ("SPSD") and was entitled to a

12. 42 U.S.C. § 12101(a)–(b).
13. 29 U.S.C. § 794(a)–(b).
14. 20 U.S.C. § 1401(3)(A).
15. 42 U.S.C. § 12102(1)(A)–(B).
16. 29 U.S.C. § 705(20)(A).
17. B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 161 n.9 (2d Cir. 2016).
18. *Id.* at 161.
19. *Id.*

sign language interpreter during class.[20] Although the school provided him with a classroom aide, Perez's assigned aide was unqualified to teach sign language.[21] As Perez neared high school graduation, the school informed his parents that he did not fulfill his diploma requirements and would not graduate, which prompted Perez to file a complaint with the Michigan Department of Education.[22] Perez alleged that SPSD denied him an adequate education in violation of IDEA, the ADA, section 504, and two other disability laws.[23] SPSD and Perez agreed to a settlement that included post-secondary compensatory education and sign language instruction for Perez.[24] Perez subsequently sued SPSD in federal district court.[25] The Western District of Michigan dismissed Perez's ADA claim, citing his failure to exhaust administrative proceedings because he had settled his IDEA claim—a decision the Sixth Circuit affirmed.[26]

The central question before the Supreme Court in this case was whether IDEA and the ADA required a student to exhaust administrative proceedings against the school district, even when such proceedings would not provide the relief sought.[27] The Court's unanimous opinion held that an ADA lawsuit seeking compensatory damages could proceed without exhausting the administrative processes of IDEA because the remedy sought under the ADA was not one provided by IDEA.[28] *Perez* is important because it changes the landscape of special education law, opening the door for families to seek compensatory damages without undergoing an extensive exhaustion process. Rather than being forced to participate in due process hearings, families can readily hold school districts financially accountable for IDEA noncompliance.

This ruling will have significant implications for the rights of children with disabilities and how school districts handle future litigation. One implication is that the process for seeking compensatory damages from school districts became more streamlined, since families may bypass IDEA's exhaustion requirement. Previously, the burden of exhausting IDEA's administrative procedures was a deterrent for families seeking remedies under federal statutes like the ADA and section 504. Another implication is

20. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 145 (2023).
21. *Id.*
22. *Id.*
23. Perez v. Sturgis Pub. Schs., 3 F.4th 236, 239 (6th Cir. 2021).
24. *Id.*
25. Perez v. Sturgis Pub. Schs., No. 18-cv-1134, 2019 U.S. Dist. LEXIS 219220, at *1 (W.D. Mich. June 20, 2019).
26. *Perez*, 3 F.4th at 245.
27. *Perez*, 598 U.S. at 144.
28. *Id.* at 151.

that the rights of students with disabilities are enhanced, as families have more leverage when negotiating settlements with school districts. Families may feel more empowered by the possibility of receiving monetary damages that will offset their litigation costs and propel school districts to address their inadequate special education programs. The availability of compensatory damages will likely lead to an increase in the number of cases brought against school districts.

However, there may be unforeseen negative consequences of increased family advocacy: prolonged legal battles and compensatory damage payouts may strain school districts' resources and divert attention away from students. School districts that are already struggling financially might experience a further breakdown in their special education services as reduced funding and resources prevent them from addressing the educational needs of students. It may be that some families will receive rightful compensation while other students with disabilities struggle against systemic issues in the administration of special education programs exacerbated by the effects of the *Perez* decision.

This Note proposes that the Supreme Court's decision in *Perez* will have far-reaching consequences for the families of students with disabilities and school districts' approaches to litigation, as well as policy implications for educational agencies in the implementation of special education services under IDEA. Part I of this Note offers an overview of IDEA's history, the statute's requirements and procedural framework, and an explanation of IDEA's exhaustion requirement that is central to the discussion in *Perez*. Also, Part I offers a brief explanation of the ADA and section 504 in relation to IDEA and the standards for receiving compensatory damages through these laws. Part II discusses a few important Supreme Court cases that litigated standards and definitions under IDEA. To fully understand the importance of the *Perez* decision, it is important to contextualize *Perez* alongside other IDEA cases heard by the Supreme Court. Part III explores the background and discussion of *Perez* and its implications for future special education litigation. Finally, Part IV explores potential consequences of the *Perez* decision and offers policy recommendations on how educational agencies can better meet IDEA requirements and address the needs of students with disabilities.

I. FOUNDATIONS OF SPECIAL EDUCATION LAW

This Part provides background information about the creation of IDEA and a detailed explanation of the statute's intentions, procedural framework, and enforcement through state educational agencies. This Part also briefly explains IDEA's exhaustion requirement, which is central to *Perez*. The final

Section of this Part describes the process and standards for a party bringing a discrimination claim for money damages under the ADA and section 504, since compensatory damages are unavailable under IDEA.

A. HISTORY OF IDEA

Beginning with the Civil Rights Movement, advocates for students with disabilities argued that the exclusion of students with disabilities from schools was a denial of equal educational opportunities analogous to racial segregation in schools.[29] Advocacy organizations and parents sued states, alleging that inappropriate educational services violated the Constitution.[30] Congress responded by enacting the Elementary and Secondary Education Act of 1965, in which the federal government provided funding to educate students below the poverty line and improve the education of students with disabilities in public schools.[31] In 1970, the Education of the Handicapped Act ("EHA") was passed and provided grant funding for higher education institutions to develop special education teacher training programs.[32] Two 1972 cases, *Pennsylvania Ass'n for Retarded Children (PARC) v. Pennsylvania* and *Mills v. District of Columbia*, are considered to be the most notable cases in special education and foundational to the ideas in IDEA.[33] In *PARC*, the district court approved an amended consent agreement that obligated the state of Pennsylvania to place every child with a disability "in a free, public program of education and training appropriate to the child's capacity."[34] In *Mills*, the district court held that the District of Columbia public school system must utilize their financial resources so "that no child is entirely excluded from a publicly supported education consistent with [their] needs and ability to benefit therefrom," especially for students with disabilities.[35] Though *PARC* and *Mills* are most frequently referenced, there were more than thirty federal cases during this period in which courts upheld the same principles outlined in *PARC* and *Mills*.[36]

In the early 1970s, only 3.9 million of the 8 million children with documented disabilities in the United States had access to an adequate

29. Antonis Katsiyannis, Mitchell L. Yell & Renee Bradley, *Reflections on the 25th Anniversary of the Individuals with Disabilities Education Act*, 22 REMEDIAL & SPECIAL EDUC. 324, 325 (2001).

30. *Id.*

31. *Id.*

32. *Id.*

33. Blakely Evanthia Simoneau, *Special Education in American Prisons: Risks, Recidivism, and the Revolving Door*, 15 STAN. J. C.R. & C.L. 87, 94 (2019) ("One can trace [*PARC* and *Mills*] to many of the cornerstone ideas that are still present in the IDEA today.").

34. Pa. Ass'n Retarded Child. v. Pennsylvania, 343 F. Supp. 279, 307 (E.D. Pa. 1972).

35. Mills v. Bd. of Educ., 348 F. Supp. 866, 876 (D.D.C. 1972).

36. Edwin W. Martin, Reed Martin & Donna L. Terman, *The Legislative and Litigation History of Special Education*, 6 FUTURE CHILD. 25, 28 (1996).

education.[37] In 1975, President Gerald Ford signed into law an amendment to the EHA, the Education for All Handicapped Children Act ("EAHCA").[38] The EAHCA's purpose was to ensure that students with disabilities received a FAPE, to protect the rights of students and parents, and to assist states and school districts in providing services.[39] The EAHCA's enactment was significant because it marked the first time that a FAPE was memorialized in the law.[40]

In 1990, amendments were passed to the EAHCA, and the law was renamed as the Individuals with Disabilities Education Act, as it is known today.[41] IDEA's purpose is to ensure that every child with a disability received a FAPE.[42] Importantly, IDEA provides funding to states and school districts that comply with its mandates.[43] The combination of IDEA's function and purpose make it both an educational grant program and a civil rights statute, rendering it a unique piece of legislation. In 1997, amendments restructured IDEA into four parts: (1) general provisions; (2) assistance for all children with disabilities; (3) infants and toddlers with disabilities; and (4) national activities to improve the education of students with disabilities.[44]

B. INSIDE IDEA

1. IDEA Requirements and Procedural Framework

IDEA contains an administrative framework that was intended to ensure that parents of students with disabilities have enforceable opportunities to participate in all aspects of their children's education.[45] The Supreme Court has made it clear that IDEA guarantees a substantively adequate program to all eligible students with disabilities, which is satisfied when a child's IEP sets out an educational program that reasonably allows the child to receive

37. Rosemary Queenan, *Delay & Irreparable Harm: A Study of Exhaustion Through the Lens of the IDEA*, 99 N.C. L. REV. 985, 999 (2021).

38. *Id.*

39. 20 U.S.C. § 1400(d)(1)(A)–(C); TOM E.C. SMITH, SERVING STUDENTS WITH SPECIAL NEEDS 6 (2016).

40. GEORGE A. GIULIANI, THE COMPREHENSIVE GUIDE TO SPECIAL EDUCATION LAW 44 (2012).

41. Individuals with Disabilities Act, Pub. L. No. 101-476, § 901(a)(1), 104 Stat. 1142 (1990). IDEA changed the terms "children" to "individuals" and "handicapped" to "with disabilities" from the previous law. GIULIANI, *supra* note 40, at 44.

42. THOMAS F. GUERNSEY & KATHE KLARE, SPECIAL EDUCATION LAW 1 (1993).

43. *Id.* at 6. For details of the three-part formula IDEA uses to allocate funding for states, see generally RICHARD N. APLING, CONG. RSCH. SERV., RL31480, INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA): STATE GRANT FORMULAS 6–7 (2003).

44. *Statute and Regulations*, INDIVIDUALS WITH DISABILITIES EDUC. ACT, https://sites.ed.gov/idea/statuteregulations [https://perma.cc/M55A-FNW9].

45. Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. SCH. L. REV. 909, 912 (2010).

educational benefits and advance from grade to grade.[46] IDEA is centered around the provision of a FAPE, which must be made in conformity with the IEP.[47] IDEA does this by guaranteeing a FAPE in the least restrictive environment ("LRE") for all students with disabilities and through the creation and implementation of IEPs.[48] A FAPE in conformity with an IEP must be specially designed to meet the unique needs of a child with a disability and include any related services that would benefit the child.[49] All states covered by IDEA must provide a child with a disability with special education and related services as prescribed by his IEP.[50] IDEA defines "special education" as specially designed instruction to meet the unique needs of a child with a disability, and "related services" as the support services required to assist a child to benefit from that instruction.[51] These services can include speech-language pathology, interpreters, occupational therapy, and counseling services.[52]

A FAPE must "have been provided at public expense, under public supervision and direction, and without charge" at an appropriate level of education that meets state standards.[53] The LRE means that, to the "maximum extent appropriate," children with disabilities are to be educated with children who are not disabled in a regular classroom setting, and that removal of children with disabilities from the regular classroom environment occurs only in cases of severe disability or when supplementary services "cannot be achieved satisfactorily."[54]

IDEA requires school districts to develop an IEP for each child with a disability.[55] Parental concerns regarding their child's education must be considered by the team.[56] States are required to oversee this process and ensure that parents of a child with a disability are involved in the IEP discussion and any decisions about the educational placement of their child.[57] A student's IEP must state the special education and related services that will be provided so that the child may advance toward achieving the annual goals set in their IEP.[58] An IEP must also state the child's current

46. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 394 (2017).
47. *See* 20 U.S.C. § 1401(9)(D).
48. *See id.* § 1412(a)(4)–(5)(B).
49. *See id.* § 1401(26)(A), (29).
50. *See id.* § 1401(9)(D).
51. *Id.* § 1401(26), (29).
52. *Id.* § 1401(26)(A).
53. *Id.* § 1401(9)(A).
54. *Id.* § 1412(a)(5)(A).
55. *Id.* §§ 1412(a)(4), 1414(d)(2)(A).
56. *Id.* § 1414(d)(3)(A)(ii).
57. *Id.* § 1414(e).
58. *Id.* § 1414(d)(1)(A)(i)(IV).

levels of academic achievement and functional performance, while explaining how the child's progress toward achieving their annual goals will be measured.[59] Based on these goals, an IEP will prescribe the special education and related services that will be provided.[60]

IDEA has a comprehensive enforcement scheme that requires states to establish and maintain procedural safeguards to ensure that students with disabilities are receiving their basic right to education—a FAPE.[61] State and local compliance with IDEA is monitored by federal review.[62] Procedural safeguards are in place to "guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate."[63] For example, states are mandated to provide an opportunity for parents to examine all relevant school records.[64] Whenever parents have complaints about the adequacy of their child's education, like in the development of their IEP, the involved state must provide an opportunity for the party to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."[65]

Once a party presents a complaint, a review process begins, in which the parents of the child with a disability discuss their complaint with the local educational agency in a preliminary meeting and the parties work to reach a resolution.[66] If the agency fails to resolve the complaint to the parent's satisfaction within thirty days, the party may request an impartial due process hearing, which can be conducted by either the local educational agency or the state educational agency.[67] A due process hearing is overseen by an impartial hearing officer who considers sworn testimony and evidence to make a decision.[68] The hearing officer's decision must be made on substantive grounds based on a determination of whether the child received a FAPE.[69] For a hearing officer to be "impartial," they must not be an employee of the state educational agency or the child's school district.[70] The officer may find a violation of a FAPE only if the procedural inadequacies

59. *Id.* § 1414(d)(1)(A)(i)(I)–(III).
60. *Id.* § 1414(d)(1)(A)(i)(IV).
61. *See id.* § 1415(a); Rivkin, *supra* note 45, at 912.
62. 34 C.F.R. §§ 104.61, 100.7.
63. Honig v. Doe, 484 U.S. 305, 311–12 (1988).
64. 20 U.S.C. § 1415(b)(1).
65. *Id.* § 1415(b)(6)(A).
66. *Id.* § 1415(f)(1)(B)(i)(IV).
67. *Id.* § 1415(f)(1)(A), (f)(1)(B)(ii).
68. *See id.* § 1415(f)(3)(A), (E).
69. *Id.* § 1415(f)(3)(E)(i).
70. *Id.* § 1415(f)(3).

"impeded the child's right to a free appropriate public education," "significantly impeded the parents' opportunity to participate in the decisionmaking process," or deprived the child of educational benefits.[71] Notably, decisions made in due process hearings are binding on both parties, though parties may appeal a decision of the local educational agency to the state educational agency.[72] Once the state educational agency reaches a decision, the aggrieved party may bring an action in state or federal district court.[73] The court will then review the administrative record, with supplementary evidence submitted at the request of a party, before granting "such relief as the court determines is appropriate" to the prevailing party.[74]

IDEA does not grant compensatory damages, but it does provide for discretionary attorneys' fees.[75] Most IDEA remedies have been equitable remedies, such as tuition reimbursement or injunctive relief.[76] Courts have also been given broad discretion in providing equitable relief that it finds appropriate and consistent with the purposes of IDEA, ADA, and section 504.[77] A court or hearing officer may require an educational agency to reimburse the parents of a child with a disability for the cost of private school enrollment if the school district cannot adequately provide a FAPE.[78]

Once a state accepts IDEA's financial assistance, an eligible child under the statute has a substantive right to a FAPE.[79] IDEA has six categories of mandates that states must meet to receive funding: (1) educational agencies must provide services to all qualified students with disabilities, regardless of the severity of their disabilities; (2) educational agencies must evaluate each student with a disability that requests a FAPE; (3) all students with disabilities aged between three and twenty-one who need special education and related services must receive a FAPE; (4) students with disabilities must be educated in the general classroom or the LRE as much as possible; (5) several procedural safeguards must be followed to guarantee a FAPE; and (6) parents must be involved at every stage of the process.[80]

71. *Id.* § 1415(f)(3)(E)(i)–(ii).
72. *Id.* § 1415(g)(1), (i)(1)(A).
73. *Id.* § 1415(i)(1)–(2)(A).
74. *Id.* § 1415(i)(2)(C)(iii).
75. *Id.* § 1415(i)(3)(B)(i).
76. *See* Deborah A. Mattison & Stewart R. Hakola, *The Availability of Damages and Equitable Remedies Under the IDEA, Section 504, and 42 U.S.C. Section 1983*, INDIVIDUALS WITH DISABILITIES EDUC. L. REP.: SPECIAL REPORT NO. 7 1, 1–5 (1992) (outlining equitable remedies under IDEA identified by case law).
77. JAMES A. RAPP, 4 EDUCATION LAW § 10C.13(4)(b) (2023).
78. 20 U.S.C. § 1412(a)(10)(C)(ii).
79. Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 158 (2017).
80. Mitchell L. Yell, Erik Drasgow, Renee Bradley & Troy Justesen, *Contemporary Legal Issues in Special Education*, *in* CRITICAL ISSUES IN SPECIAL EDUCATION: ACCESS, DIVERSITY, AND ACCOUNTABILITY 16, 20–23 (Audrey McCray Sorrells et al. eds., 2004).

2. State Responsibilities Under IDEA

In the United States, Congress does not have constitutional authority over education, so it exerts pressure on states using its spending powers,[81] particularly by offering federal funding to state and local agencies that meet IDEA conditions.[82] This funding allows the federal government to oversee state educational authorities, such as state departments of education. State educational authorities then oversee local educational authorities, which are responsible for the implementation of IDEA mandates in schools.[83] But IDEA serves only as a floor for student rights, and many states have established their own statutes to further expand upon federal mandates in the special education context. These state laws play a critical role in shaping the law for students with disabilities, so the landscape of disability-rights law can vary significantly from one jurisdiction to another. For example, what a student must do to exhaust IDEA administrative requirements before bringing a lawsuit depends on each state's rules. IDEA allows states to choose between a one- or two-tiered system for administrative review. In a one-tiered system, a state educational agency decides a student's case.[84] In a two-tiered system, a local educational agency decides the case before a party can appeal for an impartial hearing conducted by the state educational agency; all of which must happen before a civil action may be brought in a state or federal district court.[85]

Under IDEA, state and local departments of education receive federal financial assistance if they provide a FAPE for children with disabilities.[86] A state may provide educational benefits that exceed those required by IDEA, with the state standards being equally enforceable through IDEA.[87] A state must certify to the Secretary of Education that it has policies and procedures that will meet IDEA's conditions, especially IDEA's principal obligation to provide a FAPE to all eligible students with disabilities.[88] A local educational agency or school district is eligible to receive a share of the state's federal funding if it has policies and programs that are consistent with the state's policies.[89] Thus, a school district's obligations under IDEA are

81. Julie Underwood, *When Federal and State Laws Differ: The Case of Private Schools and the IDEA*, PHI DELTA KAPPAN: UNDER THE LAW, Nov. 2017, at 76, 76, https://kappanonline.org/underwood-private-schools-idea-special-education-services [https://perma.cc/CN9B-WP5Q].

82. 20 U.S.C. §§ 1412(a), 1413(a).

83. *See* GUERNSEY & KLARE, *supra* note 42, at 6.

84. *See* 20 U.S.C. § 1415(f)(1)(A).

85. *Id.* § 1415(f)(1)(A), (g)(1), (i)(2)(A).

86. CONG. RSCH. SERV., R44624, THE INDIVIDUALS WITH DISABILITIES ACT (IDEA) FUNDING: A PRIMER 1 (2019).

87. Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 658 (8th Cir. 1999).

88. 20 U.S.C. § 1412(a)–(a)(1)(A).

89. *Id.* § 1413(a)(1).

dependent on the state's formal procedures and obligations, which must align with IDEA.

3. Section 1415(l): IDEA Exhaustion Requirement

In § 1415(l) of IDEA ("section 1415(l)"), the statute requires that parties first exhaust administrative remedies before filing a complaint in state or federal court regarding the denial of a FAPE.[90] As the Supreme Court explained in *Weinberger v. Salfi*,

> Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.[91]

The exhaustion doctrine is also premised on the idea "that [educational] agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer."[92] Although courts have discretion in their decision to rule on exceptions to the exhaustion requirement, the "[a]pplication of the doctrine to specific cases requires an understanding of its purposes and of the particular administrative scheme involved."[93]

In analyzing whether an exception to the rule should be granted, courts previously considered whether the purposes of exhaustion would be served by requiring plaintiffs to exhaust administrative remedies.[94] Congress's aim was to allow educational agencies and parents to work together in developing a child's IEP.[95] Requiring the exhaustion of administrative processes allows for an exploration of the educational issues at hand, a complete consideration of the factual record, and the opportunity for educational agencies to correct the problems in their special education programs.[96]

There have been exceptions to the exhaustion requirement in certain situations, though the accepted exceptions differ across circuits.[97] Before the

90. *Id.* § 1415(l) ("[B]efore 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 . . . .").

91. Weinberger v. Salfi, 422 U.S. 749, 765 (1975).

92. McCarthy v. Madigan, 503 U.S. 140, 145 (1992).

93. McKart v. United States, 395 U.S. 185, 193 (1969); *see* Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1303 (9th Cir. 1992) ("In determining whether these exceptions apply, our inquiry is whether pursuit of administrative remedies under the facts of a given case will further the general purposes of exhaustion and the congressional intent behind the administrative scheme.").

94. *See, e.g.*, Bowen v. City of New York, 476 U.S. 467, 484 (1986).

95. Smith v. Robinson, 468 U.S. 992, 1012 (1984) (emphasizing Congress's position that parents and local educational agencies collaborate to formulate a child's IEP).

96. *Hoeft*, 967 F.2d at 1303.

97. *See, e.g.*, Honig v. Doe, 484 U.S. 305, 327 (1988) ("[P]arents may bypass the administrative

Perez decision, courts recognized that there were instances in which the exhaustion requirement did not further the goals of IDEA and excused exhaustion, but only "in cases of futility and inadequacy."[98]

C. THE ADA AND SECTION 504 OF THE REHABILITATION ACT

The ADA and section 504 of the Rehabilitation Act of 1973 are federal statutes focused on preventing discrimination against individuals with disabilities.[99] Section 504 applies to all organizations that receive federal funding, which includes public schools.[100] Prior to section 504, neither federal, state, nor local law protected people with disabilities from discrimination in schools.[101] The ADA extends to secular private schools that do not receive federal funding.[102] The ADA was enacted twenty-five years after IDEA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[103] The ADA covers a broader range of areas than IDEA since it focuses on all types of discrimination individuals face in areas such as employment, housing, and health services, in addition to education.[104] Title II of the ADA forbids any public entity, including schools, from discriminating based on disability,[105] and section 504 applies the same prohibition to any federally funded program.[106] The Supreme Court has interpreted section 504 as "demanding certain 'reasonable' modifications to existing practices in order to 'accommodate' persons with disabilities."[107]

process where exhaustion would be futile or inadequate."); *Hoeft*, 967 F.2d at 1302–03 ("[T]his exhaustion requirement is not a rigid one, and is subject to certain exceptions."); Queenan, *supra* note 37, at 97.

98. *Hoeft*, 967 F.2d at 1303. *See generally* 20 U.S.C. § 1415(b)–(c) (establishing procedural safeguards and due process rights under IDEA, including rights to administrative remedies and judicial review).

99. Mark P. Gius, *The Impact of the Americans with Disabilities Act on Per-Student Public Education Expenditures at the State Level: 1987—2000*, 66 AM. J. ECON. & SOCIO. 925, 925 (2007).

100. *Id.* at 925–26.

101. *See* RUTH COLKER, DISABLED EDUCATION: A CRITICAL ANALYSIS OF THE INDIVIDUALS WITH DISABILITIES ACT 17–18 (2013) (outlining the historical background of pre-section 504 discrimination in education).

102. Perry A. Zirkel, *Are School Personnel Liable for Money Damages Under the IDEA or Section 504 and the ADA?*, 27 EXCEPTIONALITY 77, 78 (2018).

103. 42 U.S.C. § 12101(b)(1).

104. Jane E. West, Virginia L. McLaughlin, Katharine G. Shepherd & Rebecca Cokley, *The Americans with Disabilities Act and the Individuals with Disabilities Education Act: Intersection, Divergence, and the Path Forward*, 34 J. DISABILITY POL'Y STUD. 224, 225 (2023).

105. 42 U.S.C. §§ 12131–65.

106. 29 U.S.C. § 794(a).

107. Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 160 (2017) (quoting Alexander v. Choate, 469 U.S. 287, 299–300 (1985)).

Unlike IDEA, both the ADA and section 504 authorize individuals to seek redress for violations of their rights by bringing suits for money damages.[108] The available remedies under section 203 of the ADA are the same remedies available under section 504 of the Rehabilitation Act, which are also the same remedies available under Title VI of the Civil Rights Act of 1964.[109] Based on that statutory language, the Supreme Court has found that "the remedies for violations of § 202 of the ADA and § 504 of the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964."[110]

Although the ADA is intended to protect individuals with disabilities, many people have been refused coverage.[111] Many courts have ruled that plaintiffs were not covered under the ADA's definition of "disability," as they did not fulfill any of the ADA's three requirements of having "a physical or mental impairment that substantially limits one or more major life activities," having "a record of such an impairment," or "being regarded as having such an impairment."[112] The narrow interpretation of the definition has shrunk the number of people in this protected class.[113]

The standard for obtaining compensatory damages under the ADA or section 504 is substantial. Different circuits have adopted similar requirements to establish a discrimination case under either the ADA or section 504.[114] To establish a disability discrimination claim under the ADA or section 504, a plaintiff must demonstrate that a student is a "qualified individual with a disability"; "was excluded from participation in," or otherwise discriminated against by "a public entity's services, programs or

108. 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 12133.

109. 29 U.S.C. § 794a(a)(1); 42 U.S.C. § 12133.

110. Barnes v. Gorman, 536 U.S. 181, 185 (2002).

111. Kay Schriner & Richard K. Scotch, *The ADA and the Meaning of Disability*, *in* BACKLASH AGAINST THE ADA: REINTERPRETING DISABILITY RIGHTS 164, 171–72 (Linda Hamilton Krieger ed., 2003).

112. 42 U.S.C. § 12102(1).

113. Steven S. Locke, *The Incredible Shrinking Protected Class: Redefining the Scope of Disability Under the Americans with Disabilities Act*, 68 U. COLO. L. REV. 107, 108–09 (1997).

114. Grzan v. Charter Hosp., 104 F.3d 116, 119 (7th Cir. 1997) ("[Plaintiff's] prima facie case must set out four elements: '(1) that [she] is a handicapped individual under the Act, (2) that [she] is otherwise qualified for the [benefit] sought, (3) that [she] was [discriminated against] solely by reason of [her] handicap, and (4) that the program or activity in question receives federal financial assistance." (quoting Johnson by Johnson v. Thompson, 971 F.2d 1487, 1492 (10th Cir. 1992)) (internal quotations omitted)); Gorman v. Bartch, 152 F.3d 907, 911 (8th Cir. 1998) ("To prevail on a claim under § 504, a plaintiff must demonstrate that: (1) he is a qualified individual with a disability; (2) he was denied the benefits of a program or activity of a public entity which receives federal funds, and (3) he was discriminated against based on his disability."); Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 990 (5th Cir. 2014) ("In the school setting, '[t]his court has previously determined that a cause of action is stated under § 504 when it is alleged that a school district has *refused* to provide reasonable accommodations for the handicapped plaintiff to receive the full benefits of the school program.' " (quoting Marvin H v. Austin Indep. Sch. Dist., 714 F.2d 1348, 1356 (5th Cir. 1983))).

activities"; and that exclusion or discrimination was the result of the student's disability.[115] Claims for compensatory damages under the ADA require a finding of intentional discrimination or an intentional denial of benefits, such as deliberate indifference from a school district.[116] For example, in the Ninth Circuit, to prevail on a section 504 claim, a plaintiff must establish that (1) they have a disability; (2) they were otherwise qualified to receive a benefit; (3) they were denied the benefit solely because of their disability; and (4) the program receives federal financial assistance.[117] To receive compensatory damages, a plaintiff must additionally prove intentional discrimination, such as showing deliberate indifference.[118]

II. JUDICIAL MILESTONES IN SPECIAL EDUCATION

This Part gives a brief overview of a few important IDEA cases in which the Supreme Court has decided individual disputes between children and their schools. It also aims to contextualize the Supreme Court's decision in *Perez* by highlighting the Court's role in clarifying IDEA provisions and its consistent deference to parents advocating for their children's educational rights. Finally, this Part explains *Fry v. Napoleon Community Schools*, which is the last IDEA case the Supreme Court heard before *Perez* and addresses related questions about IDEA's exhaustion requirement.

In *Board of Education v. Rowley*, the Supreme Court interpreted the term "appropriate" in IDEA's statutory construct pertaining to FAPE.[119] The Court rejected lower court decisions that required educational achievement to a child's "full potential," instead concluding that one of the main functions of IDEA was to create "access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with disabilities.[120] The Court interpreted "appropriate" to establish a "basic floor of opportunity" that required school districts to provide disabled children with an "educational benefit."[121] This case has been extremely important in clarifying the level of service school districts are required to provide to students.

115. B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 158 (2d Cir. 2016) (internal citation omitted).
116. Updike v. Multnomah Cnty., 870 F.3d 939, 950 (9th Cir. 2017); Chambers v. Sch. Dist. of Phila. Bd. of Educ., 537 F. App'x. 90, 96 (3d Cir. 2013); S.H. v. Lower Merion Sch. Dist., 729 F.3d 248, 261 (3d Cir. 2013).
117. *Updike*, 870 F.3d at 949.
118. *Id.* at 950; Csutoras v. Paradise High Sch., 12 F.4th 960, 969 (9th Cir. 2021).
119. Bd. of Educ. v. Rowley, 458 U.S. 176, 197 n.21 (1982).
120. *Id.* at 186, 201.
121. *Id.* at 201, 203–04.

Amy Rowley, a deaf student, attended public school and received services under the then EAHCA.[122] When Rowley's parents requested that the school provide her with a sign language interpreter, school officials refused, maintaining that the services she had already received were sufficient for her needs.[123] Rowley received speech and language therapy and had an audio amplification system, which the school argued was sufficient due to Rowley's passing grades.[124] Rowley's parents filed an administrative complaint based on the school's refusal to provide her with a sign language interpreter, which resulted in a favorable decision for the school district. The federal district court then ruled in the parents' favor, which was affirmed by the Second Circuit.[125] The school district appealed to the Supreme Court, which discussed two central questions: "What is meant by the [EAHCA's] requirement of a 'free appropriate public education'? And what is the role of state and federal courts in exercising the review granted by [EAHCA]?"[126]

The Court's majority opinion looked at the Congressional intent of the EAHCA, which focused on remedying the exclusion of children with disabilities from normal school environments. Justice Rehnquist wrote that "the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside."[127] The Court explained that a school's obligation was satisfied by providing the basic floor of services rather than the maximum needed for a child to succeed, since that would go farther than what the Court believed Congress intended.[128] Notably, the Court also declared that a court had the authority to grant whatever relief it deemed appropriate under the EAHCA where a school failed to satisfy procedural obligations, but emphasized that this authority was limited to procedural compliance rather than imposing substantive educational standards.[129] The Court's decision in *Rowley* had practical implications for district courts, as many were guided by the two questions the *Rowley* Court posited: "First, has the State complied with the procedures set forth in the [EAHCA]? And second, is the individualized educational program developed through the [EAHCA's] procedures reasonably calculated to enable the child to receive

122. *Id.* at 184.
123. *Id.* at 184–85.
124. *Id.*
125. Rowley v. Bd. of Educ., 632 F.2d 945, 948 (2d Cir. 1980).
126. *Rowley*, 458 U.S. 176, 186 (1982).
127. *Id.* at 192.
128. *Id.* at 198–99.
129. *Id.* at 205–07.

educational benefits?"[130] Courts have used these two questions to determine whether school districts have done enough for students, and maintain that they may not substitute any preferred policies over the school's discretion.[131] The *Rowley* Court also recognized that states have the primary responsibility for developing and executing educational programs and determining educational policies since "courts lack the 'specialized knowledge and experience' necessary to resolve 'persistent and difficult questions of educational policy.' "[132]

In *Endrew F. v. Douglas County School District RE-1*, the Supreme Court clarified its position on IDEA's FAPE provision, finding that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[133] A child with disabilities should still have the opportunity to be educated in a regular classroom that will " 'enable the child to achieve passing marks and advance from grade to grade.' "[134] In *Endrew*, the parents of a fifth-grade student with autism sought reimbursement of tuition costs for placement in a private school.[135] His parents were dissatisfied with his progress in public school because his IEP goals carried over year-to-year and he failed to make progress in his learning.[136] Endrew's parents filed a complaint with the Colorado Department of Education seeking reimbursement, which required them to demonstrate that the school district had not provided Endrew with a FAPE.[137] The district court felt that modifications to Endrew's IEP each year were "sufficient to show a pattern of, at the least, minimal progress."[138] The district court explained that minimal progress was all that the *Rowley* standard required of a school district.[139] The Tenth Circuit affirmed the lower court's decision, agreeing that special education services only need to allow a student with disabilities to make "*some* progress."[140]

130. *Id.* at 206–07.

131. *See, e.g.*, R.B. *ex rel.* F.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932, 946 (9th Cir. 2007); CP v. Leon Cnty. Sch. Bd. Fla., 483 F.3d 1151, 1153 (11th Cir. 2007).

132. *Rowley*, 458 U.S. 176, 208 (1982) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 42 (1973)).

133. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 403 (2017).

134. *Id.* at 394 (quoting *Rowley*, 458 U.S. at 204).

135. *Id.* at 395–96.

136. *Id.* at 395.

137. *Id.* at 396.

138. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, No. 12-cv-2620, 2014 U.S. Dist. LEXIS 128659, at *30 (D. Colo. Sept. 15, 2014).

139. *Endrew F.*, 580 U.S. at 396–97.

140. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 798 F.3d 1329, 1342 (10th Cir. 2015) (internal quotation omitted).

The Supreme Court stated that, "To meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[141] The Court felt that an IEP was designed to create a plan for "pursuing academic and functional advancement," which connected with IDEA's purpose to help prevent the exclusion of children with disabilities in classrooms.[142] Thus, a student offered an education that merely allowed some progress "can hardly be said to have been offered an education at all."[143] The Court refrained from creating a bright-line test for determining what "appropriate progress" meant, reasoning that it should be determined depending on each unique child.[144]

Parents of students with disabilities "often do not feel they are empowered when the [IDEA] system fails them," as litigation is not an accessible avenue for everyone.[145] In *Endrew*, Endrew's parents first paid for private specialized schooling before filing a complaint seeking reimbursement from the state,[146] requiring them to pay for expert witnesses and an attorney.[147] IDEA litigation is a lengthy process with a difficult standard for many families to meet. Endrew had to prove that the school district did not allow him to make appropriate progress on his IEP. To meet that standard, he needed professional experts who could attest to the progress he was capable of making and what services he needed to make that amount of progress beyond what the school district provided. Without the means for litigation costs and private education, Endrew would not have been able to present evidence of his progress. His case illustrates how difficult IDEA due process procedures are for parents who lack the means, agency, or understanding to navigate the process.

In *Fry v. Napoleon Community Schools*, the Supreme Court clarified the procedure that applies when a plaintiff files a complaint under a statute other than IDEA, finding that IDEA's exhaustion requirement is "not necessary when the gravamen of the plaintiff's suit is something other than the denial of IDEA's core guarantee" of a FAPE.[148] There was confusion in lower courts about how to determine whether a complaint qualified as a

141. *Endrew F.*, 580 U.S. at 399.
142. *Id.* at 399–400.
143. *Id.* at 402–03.
144. *Id.* at 403–04.
145. PRESIDENT'S COMM'N ON EXCELLENCE IN SPECIAL EDUC., A NEW ERA: REVITALIZING SPECIAL EDUCATION FOR CHILDREN AND THEIR FAMILIES 8 (2002), https://ectacenter.org/~pdfs/calls/2010/earlypartc/revitalizing_special_education.pdf [https://perma.cc/V79P-2ZKH].
146. *Endrew F.*, 580 U.S. at 395.
147. Claire Raj & Emily Suski, Endrew F.*'s Unintended Consequences*, 46 J.L. & EDUC. 499, 502 (2017).
148. Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 158 (2017).

claim under IDEA or under the ADA, section 504, or other federal laws.[149] In *Fry*, the parents of a kindergartener with cerebral palsy sought permission to let their daughter bring her service dog to school.[150] The school district denied the request because she already received similar services and a service dog would be "superfluous."[151] The parents first filed a complaint with the U.S. Department of Education's Office for Civil Rights, alleging ADA and section 504 violations, which resulted in a favorable decision for the parents.[152] The parents then brought these actions against the school district, seeking monetary and declaratory relief due to the school's denial of their daughter's right to equal access.[153] The district court dismissed their action pursuant to section 1415(l) of IDEA because the parents failed to exhaust their administrative remedies under IDEA.[154] The Sixth Circuit affirmed the district court's decision because, when the injuries alleged relate to the child's education and there is a remedy available through IDEA, "waiving the exhaustion requirement would prevent state and local educational agencies from addressing problems they specialize in addressing . . . ."[155]

The Supreme Court examined section 1415(l)'s exhaustion requirement, finding that it "hinges on whether a lawsuit seeks relief for the denial of a FAPE."[156] If a lawsuit alleges a denial of a FAPE, then it cannot circumvent section 1415(l), even if the plaintiff sues under a different federal law.[157] However, the Court did specify that if a lawsuit is brought under a different federal law and "the remedy sought is not for the denial of a FAPE, then exhaustion of IDEA's procedures is not required."[158] This is because an administrative hearing under IDEA could not provide any relief, even if the claim originates from the mistreatment of a child with disabilities.[159]

While *Fry* clarified certain aspects of the exhaustion requirement, the issue of monetary damages under IDEA remained unsettled, as circuit courts were divided on whether courts could excuse exhaustion.[160] Congress had crafted IDEA "exhaustion requirement to be flexible so that meritorious

149. *Id.* at 164–65.
150. *Id.* at 162–64.
151. *Id.* at 162.
152. *Id.* at 163.
153. *Id.* at 163–64, 174–75.
154. *Id.* at 164.
155. Fry v. Napoleon Cmty. Schs., 788 F.3d 622, 627, 631 (6th Cir. 2015).
156. *Fry*, 580 U.S. at 168.
157. *Id.*
158. *Id.*
159. *Id.*
160. Chris Ricigliano, Note, *Exhausted and Confused: How* Fry *Complicated Obtaining Relief for Disabled Students*, 16 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 34, 51 (2021).

cases would get a judicial hearing, [but] many courts have applied the rule rigidly, barring cases even when the plaintiffs present persuasive reasons for excusing exhaustion."[161] *Fry* left an unresolved issue regarding IDEA's exhaustion requirement, meaning that the plaintiffs continued to be barred when trying to seek compensatory damages under the ADA or section 504 when they failed to first exhaust their options. Had the Court answered the question then, school district responses likely would have handled IDEA complaints with more care and screened them for potential ADA and section 504 violations.

III. *PEREZ V. STURGIS PUBLIC SCHOOLS*: A TURNING POINT IN DISABILITY RIGHTS ADVOCACY

Part III delves into *Perez*, explaining how the petitioner, Miguel Luna Perez, faced educational neglect and misrepresentation from his school district before pursuing an ADA claim for emotional distress. *Perez* establishes a precedent for families to pursue claims under federal laws like the ADA and section 504 without exhausting IDEA procedures, offering new legal avenues for students with disabilities. This Part argues that this decision will have significant repercussions for special education litigation, as it enhances families' leverage in legal disputes and places financial strain on school districts' budgets and abilities to provide special education services.

A. DISCUSSION OF *PEREZ V. STURGIS PUBLIC SCHOOLS*

Petitioner Miguel Luna Perez was a deaf student who attended schools in Michigan's Sturgis Public School District from ages nine to twenty.[162] Perez was an individual who qualified as having a disability under IDEA and the ADA because he had a physical and mental impairment that substantially limited multiple major life activities, like hearing and speaking.[163] Perez claimed that SPSD was required to provide an aide to translate classroom instruction and that his aides were unqualified sign language interpreters.[164] SPSD made multiple misrepresentations to Perez and his parents, including his academic achievements by inflating his grades, that his aides knew sign language, and that he had access to the same educational services as his peers.[165] Perez claimed that, in March 2016, just months before his high school graduation, SPSD informed him and his parents that he would not

161. Mark C. Weber, *Disability Harassment in the Public Schools*, 43 WM. & MARY L. REV. 1079, 1135–36 (2002).

162. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 145 (2023).

163. Perez v. Sturgis Pub. Schs., No. 18-cv-1134, 2019 U.S. Dist. LEXIS 219220, at *1–2 (W.D. Mich. June 20, 2019).

164. *Id.* at *2–3; *Perez*, 598 U.S. at 145.

165. *Perez*, 2019 U.S. Dist. LEXIS 219220, at *2–3.

receive a high school diploma and instead would receive a "certificate of completion."[166]

This prompted Perez and his family to file an administrative due process claim with the Michigan Department of Education.[167] Perez and SPSD reached a settlement that included payment for additional schooling at the Michigan School for the Deaf, sign language instruction for Perez and his family, and payment of the family's attorneys' fees.[168] The settlement gave Perez what he was entitled to under IDEA, but there was another legal problem—SPSD also violated Perez's rights under the ADA.

Perez subsequently sued in the Western District Court of Michigan, seeking compensatory damages for emotional distress under the ADA.[169] SPSD moved to dismiss, claiming that under section 1415(l) of IDEA, Perez was barred from bringing his ADA claim until he exhausted IDEA's administrative procedures.[170] The district court agreed with SPSD's argument and dismissed the suit, which the Sixth Circuit affirmed due to circuit precedent that previously addressed the issue.[171] The Sixth Circuit opinion stated that, because Perez settled his IDEA claim, he was "barred from bringing a similar case against the school in court—even under a different federal law."[172] The Sixth Circuit found that federal law requires families to first exhaust IDEA's administrative procedures as if the action was brought under IDEA, even if they were suing under another statute.[173] Because Perez's core complaint was that SPSD denied him a FAPE, his suit sought relief that was available under IDEA, meaning he had to complete IDEA's exhaustion requirements even if he wanted to bring a separate ADA claim.[174]

The case was then brought before the Supreme Court, and the central question concerned "the extent to which children with disabilities must exhaust the[] administrative procedures under IDEA before seeking relief under other federal antidiscrimination statutes, such as the [ADA]."[175] There had been circuit splits on the interpretation of section 1415(l), so the Court

166. *Id.*; *Perez*, 598 U.S. at 145.
167. *Perez*, 2019 U.S. Dist. LEXIS 219220, at *4; *Perez*, 598 U.S. at 145.
168. Perez v. Sturgis Pub. Schs., 3 F.4th 236, 239 (6th Cir. 2021).
169. *Perez*, 2019 U.S. Dist. LEXIS 219220, at *4–5.
170. *Id.* at *6–7.
171. Perez v. Sturgis Pub. Schs., No. 18-cv-1134, 2019 U.S. Dist. LEXIS 218443, at *3–4 (W.D. Mich. Dec. 19, 2019); *Perez*, 3 F.4th at 241 (citing Covington v. Knox Cnty. Sch. Sys., 205 F.3d 912, 916–17 (6th Cir. 2000)).
172. *Perez*, 3 F.4th at 238.
173. *Id.* at 240.
174. *Id.* at 242.
175. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 144 (2023).

finally decided to address this issue.[176] Previously, the Court declined to address this issue in *Fry*, articulating that "we 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?"[177]

Here, the Court examined two features in section 1415(l): first, that IDEA is not meant to restrict an individual's ability to seek remedies under the ADA or " 'other Federal laws protecting the rights of children with disabilities,' "[178] and second, that a qualification in the statute prohibits certain lawsuits with the language, "except that before the filing of a civil action under such laws seeking relief that is also available under [section 1415(l)], the procedures under subsections (f) and (g) shall be exhausted . . . ."[179] The preceding subsections (f) and (g) discuss children's rights to due process hearings and the ability to appeal decisions to state educational agencies.[180]

Perez interpreted the statute to require exhaustion of the administrative processes discussed in subsections (f) and (g) only to the extent he pursued a suit for remedies IDEA provided.[181] Perez argued that this reading would not "foreclose[] his . . . claim because his ADA complaint [sought] only compensatory damages, a remedy everyone before [the Court] agree[d] IDEA cannot supply."[182] In contrast, SPSD interpreted the statute "as requiring a plaintiff to exhaust subsections (f) and (g) before [they] may pursue a suit under another federal law if that suit seeks relief for the same *underlying harm* IDEA exists to address."[183] This reading would have prevented Perez from bringing his ADA suit because it stemmed from a FAPE violation, which is a harm IDEA addressed.[184] And Perez had already settled his administrative complaint instead of exhausting the administrative

176. *Id.* at 146; *see* McMillen v. New Caney Indep. Sch. Dist., 939 F.3d 640, 647 (5th Cir. 2019) ("Most circuits hold that the IDEA requires plaintiffs who were denied a free appropriate public education to exhaust regardless of the remedy they seek."); Doucette v. Georgetown Pub. Schs., 936 F.3d 16, 31 (1st Cir. 2019) (finding that the plain meaning of section 1415(l) "does not appear to require exhaustion" of the plaintiff's claim).

177. Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 165 n.4 (2017).

178. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 146 (2023) (quoting 20 U.S.C. § 1415(l)).

179. 20 U.S.C. § 1415(l).

180. 20 U.S.C. § 1415(f)–(g).

181. *Perez*, 598 U.S. at 146–47.

182. *Id.* at 147.

183. *Id.*

184. *Id.*

processes in subsections (f) and (g), so he would have been foreclosed from his ADA suit.[185]

The Court found Perez's interpretation comported more consistently with IDEA, particularly with section 1415(l)'s use of "remedies," which treated it synonymously with "relief."[186] The first clause discusses remedies, the dictionary definition of which is an enforcement of rights like money damages or an injunction.[187] The statute reads that "[n]othing 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, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities," so it should be construed that IDEA does not restrict or limit the availability of remedies like money damages under federal statutes, including the ADA.[188] The Court noted that there is an exception to this rule, which prevents individuals from seeking redress under other federal laws unless they exhaust the administrative procedures.[189] But the exception "does not apply to *all* suits seeking relief that other federal laws provide."[190] The statute requires the exhaustion of administrative processes to apply *only* to lawsuits that seek relief that is also available under IDEA.[191] Thus, the Court concluded that the exception did not bar Perez from his ADA suit, because he sought compensatory damages—a form of relief that IDEA does not provide.[192] This interpretation required the Court to treat "remedies" and "relief" synonymously, which the Court found IDEA did in various places.[193] For example, the second clause in section 1415(l) refers to "*seeking* relief," which complements how a plaintiff's complaint includes "a demand for the *relief sought*."[194]

SPSD then responded by raising *Fry* as precedent.[195] However, *Fry* "went out of its way to reserve rather than decide [the] question" brought up in *Perez*, so it did not advance the school district's argument.[196] In *Fry*, the Court held that IDEA's exhaustion requirement does not apply unless a plaintiff seeks relief for a denial of a FAPE, since that is the only relief

185. *Id.*
186. *Id.* at 148.
187. *Id.* at 147 (citing BLACK'S LAW DICTIONARY 1320 (8th ed. 2004)).
188. *Id.*; 20 U.S.C. § 1415(l) (internal citations omitted).
189. *Perez*, 598 U.S. at 147.
190. *Id.*
191. *Id.*
192. *Id.* at 147–48.
193. *See* 20 U.S.C. § 1415(i)(2)(C)(iii), (i)(3)(D)(i)(III) (using "remedies" and "relief" synonymously).
194. 20 U.S.C. § 1415(l); *Perez*, 598 U.S. at 148–49 (internal quotation marks omitted).
195. *Perez*, 598 U.S. at 149.
196. *Id.*

available from IDEA.[197] The Court found that *Perez* presented an analogous situation but ultimately asked a different question about whether a plaintiff needs to exhaust the administrative remedies when they are seeking a remedy that IDEA does not provide.[198] Similar to the Court's answer in *Fry*, a plaintiff does not need to exhaust administrative processes under IDEA in this situation.[199] SPSD argued that Congress had practical reasons for requiring exhaustion, no matter the plaintiff's preferred remedy, because exhaustion enables agencies to exercise their "special expertise" and promotes efficiency.[200] The Court found SPSD's argument "unclear" and that it was a "mistake[] to assume . . . that any interpretation of a law" that better serves its presumed objectives "must be the law," as laws are the result of "compromise[s]," and no law relentlessly pursues its purposes.[201] Moreover, the Court reasoned that Congress might have aimed to ease the demand for administrative exhaustion when a plaintiff seeks a remedy available under IDEA but allow an exemption from exhaustion when a plaintiff seeks a remedy that IDEA cannot provide.[202] The Court found Perez's argument more persuasive, reversed the decision of the Sixth Circuit, and remanded the case so Perez could proceed with his ADA lawsuit in district court.[203]

B. *PEREZ*'S IMPACT ON SPECIAL EDUCATION LITIGATION

The *Perez* decision will impact how school districts and other educational agencies approach and settle IDEA complaints in the future. Families now have more leverage against school districts because they are not barred from seeking compensatory damages for failure to exhaust administrative procedures. School districts will likely approach settlement discussions differently, knowing that families now have an opportunity to be awarded compensatory damages. Although families may have more leverage during negotiations, a potential consequence could be that the *Perez* decision may lead to greater financial strain on school districts, which would prevent other students with disabilities from receiving their basic educational rights. School districts should anticipate an increase in the number of cases litigated

197. Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 168 (2017); *Perez*, 598 U.S. at 149.
198. *Perez*, 598 U.S. at 149–50.
199. *Id.* at 150.
200. Brief for Respondents at 22, Perez v. Sturgis Pub. Schs., 598 U.S. 142 (2023) (No. 21-887).
201. *Perez*, 598 U.S. at 150 (internal citations omitted).
202. *Id.*
203. *Id.* at 150–51.

because students can now "bypass [the] often slow-moving administrative proceedings under IDEA when their chief claim is for damages under other federal laws . . . ."[204]

It is worth noting that, due to systemic issues within school districts and state departments of education, even when families are awarded compensatory remedies, educational agencies may not disburse payments promptly or at all. For example, in New York City, parents of children with disabilities have sought the enforcement of orders from impartial hearings entered pursuant to IDEA, which the state department of education has failed to execute due to limited resources.[205] In *LV v. New York City Department of Education*, parents sued the New York City Department of Education ("NYC DOE") for failure to implement orders, such as funding tuition programs.[206] The parents alleged that the NYC DOE had a "systemic problem" due to its failure to maintain a dedicated system for the timely enforcement of the orders, which deprived the plaintiffs of their right to a FAPE.[207] In 2008, a settlement agreement between the parents and the NYC DOE was approved.[208] Under the settlement, the NYC DOE was required to implement all impartial hearing orders within the time frame stipulated in the order or thirty-five calendar days after the order date if no time limit was specified.[209] However, the NYC DOE failed to comply with the settlement terms for more than a decade. A Special Master was appointed in 2021 to investigate the NYC DOE's delays in the implementation of the orders. In March 2023, the Special Master issued a report after conducting interviews with the plaintiffs, families, school staff, and NYC DOE staff.[210]

The report highlighted that impartial hearings and orders have reached an all-time high in New York City, with the increased volume of requests attributable to the COVID-19 pandemic.[211] It was recommended that the

204. Mark Walsh, *Supreme Court Rules Deaf Student Can Sue School District over Alleged Failures*, EDUCATIONWEEK (Mar. 21, 2023), https://www.edweek.org/policy-politics/supreme-court-rules-deaf-student-can-sue-school-district-over-alleged-failures/2023/03 [https://perma.cc/5SQN-PFLT].

205. Complaint at 1, LV v. N.Y.C. Dep't of Educ., 700 F. Supp. 2d 510 (S.D.N.Y. 2010) (No. 03 Civ. 9917).

206. *Id.* at 5.

207. *Id.* at 10.

208. Order and Final Judgment at 3, LV v. N.Y.C. Dep't of Educ., 700 F. Supp. 2d 510 (S.D.N.Y. 2010) (No. 03 Civ. 9917).

209. Stipulation and Agreement of Settlement at 13, LV v. N.Y.C. Dep't of Educ., 700 F. Supp. 2d 510 (S.D.N.Y. 2010) (No. 03 Civ. 9917).

210. *Judge Orders NYC Department of Education to Fix Broken System for Implementing Special Education Hearing Orders*, MILBANK (July 21, 2023), https://www.milbank.com/en/news/judge-orders-nyc-department-of-education-to-fix-broken-system-for-implementing-special-education-hearing-orders.html [https://perma.cc/LQU2-YX93].

211. Special Master Recommendations at 7, LV v. N.Y.C. Dep't of Educ., 700 F. Supp. 2d 510 (S.D.N.Y 2010) (No. 03 Civ 09917).

NYC DOE address its staffing crises in the short term and then digitalize its orders for better organization.[212] One reason the NYC DOE provided for its inability to implement orders was due to NYC DOE staffing shortages.[213] The Special Master report was extremely detailed and included many short- and long-term action steps for the NYC DOE, including forty-one required steps that the NYC DOE had to take within a year. There were suggestions for the hiring, training, and retention of staff in the Implementation Unit, which oversees implementing decisions from impartial hearings, while other changes included creating a structure for parents to contact the NYC DOE when their orders are not implemented, providing a support hotline, and building better technology systems to implement orders.[214]

Although this is a victory for families of students with disabilities in New York City, it comes after a decade of inaction by the NYC DOE. This was due to systemic failures on multiple levels, which is not uncommon in school districts and state educational agencies around the country. This is just one example of how structural issues in a system and a consistently underfunded agency will lead to ineffective educational opportunities. *LV v. New York City Department of Education* is an example of the persistent challenges in ensuring the effective implementation of special education remedies, even when the law provides for a favorable solution. Students legally entitled to reimbursements or tuition assistance from a school district remained in complex litigation for years to accomplish their goals. The tuition some of the plaintiffs requested was only a few thousand dollars, but the NYC DOE was so ill-equipped at executing orders that it remained noncompliant for years. Unfortunately, there is no simple solution for the NYC DOE's structural issues. Rather, the NYC DOE faces a complex undertaking as it will need to upgrade its infrastructure and rehaul its staff to better respond to the influx of settlements that have piled up and the new hearings that are coming down the horizon.

This case is illustrative of how receiving monetary compensation is important and helpful for students with disabilities to receive a FAPE under IDEA, but a compensatory remedy might not yield anything substantial. The NYC DOE was bound by court orders, but the plaintiffs in *LV* still waited more than a decade for compensation. And it is unclear whether the recent judicial order will actually result in greater implementation of orders for other students with disabilities. It seems likely that students with disabilities will continue to endure neglect in the system if the state and educational agencies do not have proper mechanisms in place to provide students with

212. *Id.* at 9.
213. *Id.* at 10.
214. *Id.* at 9, 11, 70.

their remedies. The NYC DOE manages the largest public school system in the nation, with a 2023–2024 school year budget of $37.5 billion.[215] Even as the NYC DOE likely has more resources than other school districts, it still struggles with the volume of orders and order implementation. As more decisions ordering monetary remedies are made post-*Perez*, school districts and state education departments will need to upgrade their infrastructure to deal with outstanding orders and future settlements. Another concern is whether there is funding and leadership dedicated to making those changes. At schools that struggle with leadership turnover among superintendents or principals, this can lead to inconsistency with vision and changing priorities affecting staff effectiveness and cohesiveness and making it even more difficult to train staff and support teachers in developing strong relationships with students.[216] Educational agencies should take the *Perez* decision seriously and take *LV* as a precautionary tale for judicial orders that compel major changes to address structural issues in regard to special education programs and the rights of students with disabilities.

In recent cases decided in the months following the *Perez* decision, courts have put together IDEA statute and the precedents from *Fry* and *Perez* to evaluate suits against public schools for alleged violations of IDEA, the ADA, or other antidiscrimination statutes. In *Dale v. Suffern Central School District*, the Southern District of New York found that the plaintiffs were not required to exhaust administrative remedies because the plaintiffs sought "a form of relief that IDEA cannot provide—specifically, compensatory damages," and because exhaustion was not required in the circumstances because of the ruling precedent of *Perez*.[217] In *Roe v. Healey*, a First Circuit case decided in August 2023, the district court below found that plaintiffs were required to exhaust all their FAPE-related claims first, which included claims under IDEA, associated Massachusetts regulations, section 504 of the Rehabilitation Act, the ADA, and the Fourteenth Amendment (enforced through § 1983).[218] The Fifth Circuit now looks at whether a complaint concerns a denial of a FAPE.[219] If it does not concern the denial of a FAPE,

215. *Funding Our Schools*, NYC PUB. SCHS., https://www.schools.nyc.gov/about-us/funding/funding-our-schools [https://perma.cc/MY9F-7WAX].

216. Charles E. Wright Jr., *Opinion: Want to Stop Superintendent Turnover? Take a Hard Look at How School Systems Really Operate*, HECHINGER REP. (Jan. 6, 2025), https://hechingerreport.org/opinion-want-to-stop-superintendent-turnover-take-a-hard-look-at-how-school-systems-really-operate [https://perma.cc/H3UK-8RVC]; Evie Blad, *High Pace of Superintendent Turnover Continues, Data Show*, EDUC. WEEK (Sept. 19, 2023), https://www.edweek.org/leadership/high-pace-of-superintendent-turnover-continues-data-show/2023/09 [https://perma.cc/KLT3-U8XV].

217. Dale v. Suffern Cent. Sch. Dist., No. 18 Civ. 4432, 2023 U.S. Dist. LEXIS 175841, at *30 (S.D.N.Y. Sept. 28, 2023).

218. Roe v. Healy, 78 F.4th 11, 19 (1st Cir. 2023).

219. Lartigue v. Northside Indep. Sch. Dist., 100 F.4th 510, 515 (5th Cir. 2024).

then administrative exhaustion is not necessary.[220] If the complaint concerns a denial of a FAPE, the court then looks to the relief sought, and if IDEA cannot provide the relief sought, like compensatory damages, the plaintiff does not need to exhaust IDEA's administrative requirements.[221] Courts appear to be applying *Perez* consistently and are not barring plaintiffs from seeking relief for a FAPE violation that is not provided by IDEA, even if they have not exhausted the administrative procedures pursuant to section 1415(l).[222] At the very least, *Perez* clarified a confusing question for district and circuit courts left previously unanswered in *Fry*, so there is greater clarity for families seeking relief under IDEA or other antidiscrimination statutes.

IV. BEYOND *PEREZ*: IMPLICATIONS AND CHALLENGES IN SPECIAL EDUCATION POLICY

This Part explores the policy implications of the *Perez* decision, including whether this decision may cause more harm than benefit. It examines the advantages of allowing compensatory damages for families of children with disabilities, while also weighing the significant financial burdens such damages could impose on school districts. This Part also underscores the need for more explicit and accessible IDEA guidelines, so school districts can better understand and fulfill their obligations under IDEA.

A. IMPLICATIONS OF THE *PEREZ* DECISION

IDEA's exhaustion requirement applies to suits alleging violations under IDEA and to "civil action[s] under [other] laws seeking relief that is also available under [chapter 33]."[223] Prior to the *Perez* decision, plaintiffs alleging a denial of a FAPE and requesting a remedy that IDEA did not

220. *Id.*

221. *Id.*

222. *See, e.g.*, J.W. v. Paley, 81 F.4th 440, 448 (5th Cir. 2023) ("The Supreme Court's recent decision in *Perez* provides unmistakable new guidance."); J.L. v. N.Y.C. Dep't of Educ., No. 17-CV-7150, 2024 U.S. Dist. LEXIS 93428, at *45–46 (S.D.N.Y. Jan. 26, 2024) (reasoning that because of *Perez*, the plaintiffs are not required to meet IDEA exhaustion requirements for their Americans with Disabilities Act of 1990 ("ADA") and section 504 claims); Chollet v. Brabrand, No. 22-1005, 2023 U.S. App. LEXIS 21728, at *3 (4th Cir. Aug. 18, 2023) (per curiam) (remanding a dispute about "whether and to what extent the plaintiffs seek a remedy also available under the IDEA" in light of *Perez*); Corvian Cmty. Sch., Inc. v. C.A., No. 23-cv-00022, 2023 U.S. Dist. LEXIS 164724, at *8 n.2 (W.D.N.C. Sept. 15, 2023) (mentioning that the court must enforce IDEA's exhaustion requirement because the plaintiff is seeking compensatory private school education costs, which is a remedy available under IDEA, so the *Perez* exception does not apply); Thomas v. Abbeville High Sch., No. 23-CV-01432, 2024 U.S. Dist. LEXIS 31143, at *7 (W.D. La. Feb. 2, 2024) (outlining the analytical framework for evaluating claims for relief under IDEA).

223. 20 U.S.C. § 1415(l).

provide still had to exhaust administrative remedies under IDEA.[224] However, now the *Perez* Court has opened up the possibilities for families of children with disabilities by allowing them to pursue money damages under different federal laws, even when they are seeking a denial of a FAPE. Following this decision, district courts and courts of appeal have issued decisions citing and applying *Perez*, acknowledging that exhaustion is required only if the plaintiff seeks relief that is available under IDEA.[225] However, plaintiffs attempting to argue that the exhaustion requirements are no longer relevant in IDEA suits will likely still be unsuccessful, since *Perez* applies only to plaintiffs who bring suits under a separate federal law besides IDEA and for compensatory damages that IDEA does not provide.[226] Various circuit courts have remanded matters to district courts so they can apply the *Perez* ruling.[227]

While it appears beneficial for families of children with disabilities to receive compensatory damages for inadequate educational opportunities under IDEA, the traditional remedies offered for IDEA noncompliance may be more appropriate for various reasons. For example, when a school district fails to comply with IDEA, restructuring the education system to provide adequate services for its students in the future seems more reasonable than offering a sum of money. Although there is an argument that financial penalties can motivate substantial changes from educational agencies, this approach overlooks the systemic problems within a school district and potential oversight from the state educational agency. In addition, the increased focus on litigation now that parents can bypass administrative procedures, will divert resources from addressing structural issues in school districts' special education programs, especially given the potential for increased non-meritorious litigation to seek money damages after the *Perez* decision. The aggregate effect of school districts paying compensatory damages and dedicating more time toward lawsuits could detract attention

224. *See* Perez v. Sturgis Pub. Schs., 598 U.S. 142, 149–50 (2023); Fry v. Napoleon Cmty. Schs., 580 U.S. 154, 165 (2017).

225. *See, e.g.*, Pitta v. Medeiros, No. 22-11641, 2023 U.S. Dist. LEXIS 87864, at *12 (D. Mass. May 19, 2023).

226. Close v. Bedford Cent. Sch. Dist., No. 23-CV-4595, 2024 U.S. Dist. LEXIS 125457, at *30 (S.D.N.Y. July 16, 2024).

227. *See, e.g.*, Powell v. Sch. Bd. of Volusia Cnty., 86 F.4th 881, 885 (11th Cir. 2023) (per curiam) (holding that, because the plaintiff sought compensatory monetary damages instead of compensatory education, the plaintiff was not required to exhaust administrative remedies under IDEA, and thereby vacating and remanding the decision); Simmons v. Murphy, No. 23-288-cv, 2024 U.S. App. LEXIS 13588, at *8 (2d Cir. June 5, 2024) (acknowledging that *Perez* has abrogated the circuit court's contrary holdings and those decisions are "no longer good law") (citation omitted); Farley v. Fairfax Cnty. Sch. Bd., No. 21-1183, 2023 U.S. App. LEXIS 10176, at *3 (4th Cir. Apr. 26, 2023) (per curiam) (vacating and remanding a district court decision to dismiss a complaint for failure to exhaust administrative remedies because it conflicts with *Perez*); F.B. v. Francis Howell Sch. Dist., No. 23-1073, 2023 U.S. App. LEXIS 30515, at *2 (8th Cir. Nov. 16, 2023) (per curiam) (same).

from students, leaving school districts unable to enhance their special education services and at risk of providing reduced educational quality with reduced financial resources at their disposal.

The NYC DOE published data that showed that 37% of preschoolers with disabilities did not receive their mandated special education services in the 2021–2022 school year.[228] More than 6,500 preschoolers who needed speech therapy did not have one session in the entire school year.[229] Advocates for Children of New York, a non-profit dedicated to helping at-risk students receive a high-quality education, recommends New York City invest $50 million into the city's upcoming budget to increase preschool special education services.[230] That investment would go into hiring more teachers, increasing pay, and providing services similar to those recommended by the Special Master in *LV*.[231] With thousands of students struggling in school districts to access their services, and even more students potentially not being identified as needing services, it is concerning that, following *Perez*, more money might be paid out to plaintiffs, while less money goes toward special education services.

Another avenue school districts should turn toward is the Office of Special Education and Rehabilitative Services' Office of Special Education Programs ("OSEP"), which provides discretionary grant awards.[232] In the 2023 fiscal year, OSEP provided over $110 million under IDEA to fund new programs to help educate children with disabilities.[233] This includes hiring and training special education staff, early intervention services, and technical assistance to help states meet IDEA data collection.[234] Investment in infrastructure and staffing will help school districts avoid lawsuits in the first place and avoid violating IDEA by providing inadequate special education services or failing to identify and track students with disabilities.

Another effect the *Perez* decision may have on educational agencies is in their assessment and implementation of IEPs and other accommodations for students with disabilities. School districts and states must account for the possibility of being sued under the ADA and other federal laws regarding

228. News Release, Advocates for Children of New York, New Data Show Thousands of Preschoolers with Disabilities Did Not Receive Needed Services (Mar. 21, 2023), https://www.advocatesforchildren.org/sites/default/files/on_page/NP_statement_preschool_special_ed_data_032123.pdf [https://perma.cc/Q7L7-3R68].

229. *Id.*

230. *Id.*

231. *See* Special Master Recommendations, *supra* note 211, at 21–23.

232. *See New OSEP 2023 Discretionary Grant Awards*, U.S. DEP'T OF EDUC.: OFF. OF SPECIAL EDUC. & REHAB. SERVS. BLOG, https://sites.ed.gov/osers/2023/10/new-osep-2023-discretionary-grant-awards [https://perma.cc/6MAQ-HVHC] (detailing OSEP discretionary grant awards).

233. *Id.*

234. *Id.*

equal access. Student requests should be addressed not just through IDEA's lens but also through the lenses of the ADA and section 504. Failure to do so will leave educational agencies open to greater liability now that the remedy of money damages is accessible to students and families. School districts that are most vulnerable to increased lawsuits are clearly those with longstanding violations of students' FAPE. For school districts that are diligent about abiding by IDEA's requirements and providing proper FAPE to their students who require accommodations, the implications of *Perez* will not be as intense.

The *Perez* decision allows students with disabilities to bring discrimination claims under the ADA to receive compensatory damages, but plaintiffs will need to prove their discrimination claims. While this presents an enormous opportunity for students like Perez to have their day in court, plaintiffs still need to prove intentional discrimination to receive monetary claims under the ADA.[235] The bar to receive monetary damages under either the ADA or section 504 remains high[236] because proving intentional discrimination is difficult.[237] Plaintiffs have to demonstrate that school districts were "deliberately indifferent to [a] student's rights, exercised gross misjudgment, or acted in bad faith."[238] So, although it seems like there will be an uptick in lawsuits against educational agencies post-*Perez*, that does not mean that plaintiffs will prevail and actually receive monetary damages.

It is more likely that families can leverage this change into receiving larger settlement payouts from school districts, since they can threaten to escalate their claims from negotiations to court.[239] Perry A. Zirkel, a special education law expert and law professor, expressed that the special education field remains "entirely unaffected" because the chances of courts awarding money damages for ADA or section 504 lawsuits "remain very strongly against the parents."[240] Zirkel does acknowledge, however, that after *Perez*, there will likely be more litigation that increases court congestion and parents' leverage during settlement negotiations.[241] Another reason *Perez*

235. Naaz Modan & Kara Arundel, *Supreme Court Rules Against District in* Perez v. Sturgis Public Schools *Special Ed Case*, K-12 DIVE (Mar. 21, 2023), https://www.k12dive.com/news/Supreme-Court-Perez-Sturgis-special-education [https://perma.cc/8BMC-M8RB].

236. Mitchell L. Yell, Michael A. Couvillon & Antonis Katsiyannis, Perez v. Sturgis Public School *(2023): The Supreme Court Rules on the Special Education Exhaustion Requirement*, 60 INTERVENTION SCH. & CLINIC 70, 72 (2024).

237. Modan & Arundel, *supra* note 235.

238. Yell et al., *supra* note 236, at 72.

239. Modan & Arundel, *supra* note 235.

240. Perry A. Zirkel, *The Latest Supreme Court "Special Education" Decision:* Perez v. Sturgis Public Schools (2023), https://perryzirkel.com/wp-content/uploads/2023/03/perez-overview.pdf [https://perma.cc/N35S-LYVG].

241. *Id.*

strengthens families' positions is that attorneys for school districts view litigating IDEA claims as overly cumbersome and in need of major reform.[242] Even when school districts prevail, they must pay substantial attorney's fees for trial preparations and attending hearings, while special education teachers must spend time attending additional IEP meetings, interviewing with attorneys, and preparing to testify—all of which takes them away from their normal classroom responsibilities.[243] Even if a parent's complaint is frivolous, school districts sometimes agree to parental demands simply because a school district's own attorney's fees would likely be greater to litigate than the requested changes to IEPs or compensatory education.[244]

On the other hand, the ADA could help alleviate financial difficulties with litigation, as judges could award monetary remedies along with discretionary attorney's fees.[245] This potential source of funding could change lawyers' strategies to bring ADA claims against school districts simultaneously with a due process hearing over IDEA complaints. Special education lawyers could also work on a contingency fee basis now that monetary damages are available. The decision to litigate in court is a personal one, however, and even with monetary damages, families may be reluctant to pursue that avenue.

Another critical factor to consider is the financial constraints and pressure on school districts *Perez* may cause. There is a strong possibility that allowing compensatory damages and having school districts pay out monetary awards to families will affect school districts' ability to provide adequate special education services. School districts often operate under tight budgets, with funds allocated across various departments and needs. Because more parents have begun requesting services from school districts under the ADA and section 504, aggregate costs for accommodations like special transportation, testing accommodations, and publicly provided education at private schools have compounded.[246] With budget constraints and added costs from litigation and monetary damages, fulfilling all IDEA requirements following *Perez* could overwhelm school budgets.[247] This could lead to the trimming of other operational expenses or essential

242. Kevin J. Lanigan, Rose Marie L. Audette, Alexander E. Dreier & Maya R. Kobersy, *Nasty, Brutish . . . and Often Not Very Short: The Attorney Perspective on Due Process*, *in* RETHINKING SPECIAL EDUCATION FOR A NEW CENTURY 213, 225–26 (Chester E. Finn, Jr. et al. eds., 2001) (exploring the high costs of litigation from a school district perspective).

243. *Id.* at 225.

244. *Id.* at 226.

245. 42 U.S.C. § 12205.

246. Gius, *supra* note 99, at 926–27.

247. *See Special Education—Attorney's Fees*, CAL. SCH. BDS. ASS'N, https://publications.csba.org/reports/ela/2020-annual-report/special-education-attorneys-fees [https://perma.cc/79XV-3STW] (detailing the importance of rising costs on school districts using a case study).

educational services, like school psychologists, speech pathologists, and extracurricular teachers. Diverting funds from valuable programs for children is a concern, especially because districts in lower-income areas will likely be affected at disproportionate rates. School districts primarily rely on local property taxes, state funding, and federal assistance for their budgets, so the financial ability to comply with IDEA procedures might not be feasible for school districts, even those that want to eradicate the educational inequities that students with disabilities experience. Another possibility is that school districts might be able to wield their insurance coverage effectively, depending on their coverage, to cover or defend against an ADA claim.[248] This could reduce litigation costs and help offset higher settlement payouts to plaintiffs for school districts, but it depends on the insurance coverage plan and whether premiums might increase with more claims submitted.

B. CHALLENGES IN POLICY IMPLEMENTATION AND COMPLIANCE

School districts should not use an unclear statute as an excuse for their failure to provide adequate learning, however. The long-term harm caused to Perez by SPSD could have been mitigated if SPSD simply provided a certified sign language interpreter from the beginning. Even if IDEA standards are confusing, SPSD should have informed Perez's family about his actual performance and not given inflated grades. There was a serious violation of Perez's basic education for twelve years, and such egregiousness in school districts must be prevented. The lack of following basic standards of practice for deaf students in *Perez* is unacceptable considering there is usually guidance available from each state's department of education.[249] For example, SPSD could have reached out to the Michigan Department of Education Low Incidence Outreach to receive resources about serving students with hearing or visual disabilities.[250]

Even though there may be financial strain on school districts, it is still essential for school districts to strengthen their special education staff, services, and administration, not merely to avoid lawsuits and financial penalties following *Perez*, but to genuinely meet the needs of students with disabilities. To reduce the risk of litigation and ensure effective compliance,

248. *Supreme Court Rules in Favor of Plaintiff in Lawsuit over Special Education Services*, CAL. SCH. BDS. ASS'N, https://publications.csba.org/california-school-news/may-2023/supreme-court-rules-in-favor-of-plaintiff-in-lawsuit-over-special-education-services [https://perma.cc/322K-QZZ7].

249. Cheryl DeConde Johnson & Bill Knudsen, Perez v. Sturgis*: A Wake-Up Call on Complying with IDEA*, ASHAWIRE: LEADERLIVE (Sept. 1, 2023), https://leader.pubs.asha.org/do/10.1044/leader.AEA.28092023.aud-perez-IDEA.14 [https://perma.cc/ECF7-6EME].

250. MICH. DEP'T OF EDUC.: LOW INCIDENCE OUTREACH, https://mdelio.org [https://perma.cc/4SYW-7QYT].

there is a pressing need for clear, specific guidelines detailing the standards school districts must meet under applicable statutes. That is an imperative issue that Congress should address in the near future, now that *Perez* has been decided. The National Council on Disability ("NCD"), an independent federal agency, was created to provide recommendations that promote disability policies, programs, and procedures that enhance the lives of individuals with disabilities.[251] Congress should rely more on the NCD's recommendations and have the NCD host forums and publish more reports about how to improve IDEA implementation for school districts. Clarifying these compliance standards would provide much-needed direction for school districts, helping them fulfill their legal obligations to students with disabilities and reducing the likelihood of costly legal battles.

Although there is potential for *Perez* to compel school districts that do not currently meet IDEA requirements to reform their special education programs, the statute's broad and not-well-defined framework presents additional challenges to effectively complying with IDEA.[252] The statute's ambiguity can lead to varied interpretations of what it requires, which is especially challenging for school districts with limited resources that already struggle to determine what services need to be rendered from convoluted state and IDEA legislation. School districts also need well-trained, qualified professionals available to provide services to students with disabilities, another challenge for districts with limited budgets, as it is difficult to attract and retain talent with low salaries. Training and professional development for the latest requirements in special education law specific to a school district's city or state is also costly. For successful IEP implementation, there needs to be continuous monitoring and evaluation of students with disabilities in their regular classrooms and during their services. Overworked special education teachers may struggle to manage observations and oversee regular IEP meetings. Limited resources can easily result in poor infrastructure and ineffective tracking of student performance and students with disabilities.

Increased advocacy for state and federal funding to address IDEA noncompliance and ease the burden of responding to an influx of complaints could ease the pressure on school districts. There should also be clearer guidelines and frameworks for districts to better understand and implement IDEA requirements. Establishing a state-level advisory body, for example, can offer guidance and assistance for the state-specific rules, in addition to

251. West et al., *supra* note 104, at 232.

252. *See* MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 35–39, 350–70 (1990) (discussing a host of issues caused by the ambiguous statutory framework underlying what is now IDEA).

IDEA procedures. Congress may also choose to address this situation through amendments to IDEA or when IDEA is reauthorized.[253]

Race and socioeconomic status are also important considerations for the impact of *Perez* on students with disabilities. Students of color are generally overrepresented in special education settings, in which they are "disproportionately labeled in 'soft' disability categories such as emotionally disturbed, [and] ADHD . . . ."[254] Once labeled in those categories, those children often "receive differential access to high-quality education, are not tracked toward college, experience higher rates of suspension and expulsion, and are disproportionately represented in juvenile justice prisons."[255] In 1997, a reauthorization and amendment to IDEA acknowledged the problem of overrepresentation of minority students in special education classes, specifically that "[s]tudies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education."[256] A major weakness in the due process model is that parents who have little agency in the process, like those with limited sophistication in educational advocacy and access to legal representation, struggle to advocate on behalf of their children.[257]

Additionally, even though families have the option to sue, it is expensive to hire a private attorney to sue a school district, and a family's socioeconomic means often influences the outcome.[258] In *Endrew*, Endrew's parents paid for expert witnesses in addition to their lawyer and initially funded a private, specialized education before pursuing reimbursement.[259] Endrew had to demonstrate that the school district prevented him from making the necessary progress toward his IEP. If Endrew's family did not have the funds to cover the fees of the lawsuit and private schooling, he would not have been able to demonstrate his progress. Low-income parents can hardly be expected to undergo this financial burden without a guarantee,

253. Yell et al., *supra* note 236, at 72.

254. Liat Ben-Moshe & Sandy Magaña, *An Introduction to Race, Gender, and Disability: Intersectionality Disability Studies, and Families of Color*, 2 WOMEN, GENDER & FAMS. COLOR 105, 107 (2014).

255. *Id.* (quoting Deanna Adams & Erica Meiners, *Who Wants to Be Special? Pathologization and the Preparation of Bodies for Prison*, *in* FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 145, 149 (Anthony J. Nocella II et al. eds., 2014)).

256. 20 U.S.C. § 1400(c)(12)(E); *see also id.* § 1400(c)(12)(A)–(C) (noting that more minority children continue to be disproportionately placed into special education classes and African-American children are identified with greater intellectual disabilities compared to their White counterparts).

257. Rivkin, *supra* note 45, at 913; *see* JOEL F. HANDLER, THE CONDITIONS OF DISCRETION: AUTONOMY, COMMUNITY, BUREAUCRACY 79 (1986) (identifying socioeconomic challenges that parents face).

258. Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413, 1445 (2011);

259. Raj & Suski, *supra* note 147, at 501–02.

since money damages might not offset the cost of expensive litigation. Not to mention, their child might continue to fall further behind while the legal proceedings unfold. As an overwhelming percentage of children with disabilities who qualify for IDEA services are low-income, it is unclear whether more parents will go through with litigation, even with the potential for compensatory damages, simply due to a lack of legal sophistication or limited resources.[260]

C. STRATEGIC APPROACHES AND SYSTEMIC CHANGES IN SPECIAL EDUCATION

In July 2023, the U.S. Department of Education released guidance to help states address and better understand IDEA requirements, focused on providing students with a FAPE.[261] "With this guidance, States will have the information necessary to exercise their general supervision responsibilities under IDEA and ensure appropriate monitoring, technical assistance . . . , and enforcement regarding local programs."[262] The guidance is thorough in identifying noncompliance, while outlining the timeline for correcting noncompliance, the enforcement actions a state must take if a program does not meet IDEA requirements, and the proper way to monitor local educational agency programs.[263] States bear the primary responsibility of ensuring that districts are adequately serving students under IDEA through "general supervision," so better state oversight of local school districts is critical to ensuring that schools meet their obligations to students with disabilities.[264]

The federal guidance recommends that each state set up a robust monitoring system that "swiftly identifies and corrects noncompliance; increases accountability through the collection of timely and accurate data; and ensures the full implementation of IDEA to improve functional outcomes."[265] This guidance came out after OSEP identified a failure of

260. *See* Pasachoff, *supra* note 258, at 1443–46 (detailing transaction costs that may prevent certain parents from bringing claims).

261. U.S. DEP'T OF EDUC.: OFF. SPECIAL EDUC. & REHAB. SERVS., OSEP QA 23-01, STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA: MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT (2023), https://sites.ed.gov/idea/files/Guidance_on_State_General_Supervision_Responsibilities_under_Parts_B_and_C_of_IDEA-07-24-2023.pdf [https://perma.cc/G32J-HNDR].

262. *Id.* at i.

263. *Id.* at 2–4, 14–15, 18, 34.

264. Evie Blad, *Do More to Ensure Schools Meet Obligations to Students with Disabilities, Feds Tell States*, EDUC. WEEK (July 27, 2023), https://www.edweek.org/teaching-learning/do-more-to-ensure-schools-meet-obligations-to-students-with-disabilities-feds-tell-states/2023/07 [https://perma.cc/XN57-J3FU].

265. U.S. DEP'T OF EDUC., *supra* note 261, at 37.

multiple states to comply with IDEA, so OSEP is providing "accessible and actionable information" for states to exercise their duties to help protect the rights of students with disabilities.[266] Between 2014 and 2023, on average, only seven states received the "meets requirements" determination in accordance with IDEA statute for Part B responsibilities regarding providing a FAPE.[267] OSEP released this guidance to increase accountability by strengthening states' general supervision programs to improve compliance. Ideally, this new guidance will take the onus off parents filing formal complaints as more states bolster their oversight mechanisms.

This guidance is another step in the right direction, especially after *Perez*, because it forces states to take more aggressive actions against noncompliant school districts. Notably, the guidance notes that allegations about IDEA violations can come from media reports, feedback sessions, and other areas beyond the normal formal-complaint setting.[268] Now, a school district cannot be found in compliance with IDEA until they have completely resolved the issue that was raised, and school districts must address noncompliance as soon as possible and no later than a year after it is flagged.[269] Monitoring ensures that school districts are following IDEA requirements, but OSEP will need to take action beyond issuing guidance for school districts to truly start remedying their IDEA noncompliance.

School districts now face the challenge of adapting to a new legal environment, in which IDEA's due process procedures may no longer serve as an efficient and exclusive avenue to address the needs of students with disabilities, but as a potential battleground for financial claims. As more complaints and cases are heard in district courts, the *Perez* decision will likely be a reckoning for school districts with a history of neglecting students with disabilities. This will hopefully provide enough financial incentive for those school districts and state education departments to shore up their management and oversight of special education services. Like the NYC DOE's new plan, other educational agencies should consider evaluating areas for improvement in their own special education services to avoid litigation and provide an inclusive classroom environment for students with disabilities that IDEA was created to address. Educational agencies are also likely to place greater care in crafting settlements to comprehensively address all issues that families are alleging, so there is greater potential for children with disabilities to access a broader range of remedies and legal

266. Letter from Valerie C. Williams, Dir., Off. of Special Educ. Programs (July 24, 2023), https://sites.ed.gov/idea/files/dcl-general-supervision-responsibilities.pdf [https://perma.cc/ES47-PVSJ].

267. *Id.*

268. U.S. DEP'T OF EDUC., *supra* note 261, at 13.

269. *Id.* at 21.

protections. There is great potential for the *Perez* decision to initiate comprehensive and thoughtful change for the treatment and schooling of students with disabilities in classrooms, as educational agencies elect to avoid costly litigation and expensive compensatory damages in favor of addressing systemic issues within their schools.

CONCLUSION

As Justice Gorsuch stated, the *Perez* decision "holds consequences not just for Mr. Perez but for a great many children with disabilities and their parents."[270] Perez's heartbreaking story about attending SPSD for over a decade with unqualified interpreters, leaving him unable to understand material or even learn sign language properly, is unfortunately just one of the many stories of students with disabilities who have been failed by their school systems. The Court's unanimous decision removes unnecessary burdens and clarifies the requirements and remedies that are available for children with disabilities and their families when they pursue litigation against school districts.[271] The Court explained that a student with a disability need not first exhaust the administrative requirements of IDEA before filing a lawsuit seeking compensatory damages under the ADA or other federal antidiscrimination laws, since IDEA cannot provide those remedies. Though the lasting effects of this decision are yet to be seen, there are practical implications for school districts effective immediately, including a greater urgency to be responsive to parent concerns and student needs, abide by IDEA procedures, and implement student IEPs effectively. At the very least, the special education world can feel cautiously optimistic that *Perez* will help more students be made whole by the legal system and by educators who ensure that students with disabilities' unique needs are met. After all, there were approximately 7.6 million children receiving services under IDEA in the 2022–2023 school year, so *Perez* has far-reaching implications.[272]

While this decision empowers families by holding school districts financially accountable, school districts' ability to provide adequate special education services may be hindered if schools spend more time battling litigation and paying money damages. Nonetheless, this unanimous decision preserves IDEA's clear purpose of allowing students with disabilities to

270. Perez v. Sturgis Pub. Schs., 598 U.S. 142, 146 (2023).

271. *National Disability Rights Groups Applaud SCOTUS Decision in* Perez v. Sturgis, EDUC. L. CTR. (Mar. 22, 2023), https://edlawcenter.org/news/archives/other-issues-national/national-disability-rights-groups-applaud-scotus-decision-in-perez-v.-sturgis.html [https://perma.cc/MRB2-KUNL].

272. CONG. RSCH. SERV., R41833, THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA), PART B: KEY STATUTORY AND REGULATORY PROVISIONS 1 (2024).

receive a FAPE as soon as possible and to preserve their legal rights under other federal statutes.[273] *Perez* is momentous because, as Justice Kagan acknowledged, oftentimes, it is "the parents [of students with disabilities] that have the greater incentive to get the education fixed for their child[ren]," and this decision allows students with disabilities to receive everything they are entitled to under IDEA and also receive compensatory damages under the ADA.[274] The decision underscores the need for school districts to address structural problems that prevent students with disabilities from access to their rightful educational opportunities. As school districts grapple with *Perez*, we will surely see whether the Court's holding delivers financial redress to children with disabilities who are discriminated against, suffer harm from, and have claims under both IDEA and the ADA, and how the future landscape of special education is transformed as a result.

273. Callie Oettinger, Perez v. Sturgis*: Will Supreme Court's Decision Lead to Helping or Harming Students?*, SPECIAL EDUC. ACTION (Jan. 18, 2023), https://specialeducationaction.com/perez-v-sturgis-will-supreme-courts-decision-lead-to-helping-or-harming-students [https://perma.cc/8R6H-DTSP].

274. Transcript of Oral Argument at 83, Perez v. Sturgis Pub. Schs., 598 U.S. 142 (2023) (No. 21-887).