



CASES AND CONTROVERIES: a review of the national school landscape

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Special Education

Perez v. Sturgis Pub. Sch.

143 S. Ct. 859 (2023).

- Miguel Perez is a deaf student who attended schools in Michigan.
- Family filed an IDEA complaint and the parties settled the dispute before an administrative hearing took place.
- Family later sued the district for relief in the form of compensatory damages, alleging a violation of the ADA.
- Issues:
 - Whether, and in what circumstances, should the court excuse further exhaustion of the IDEA's administrative proceedings under Section 1415(l) when such proceedings would be futile.
 - Whether Section 1415(l) requires exhaustion of a non-IDEA claim seeking money damages that are not available under the IDEA.

Section 1415(l)

01

“Nothing [in IDEA] shall be construed to restrict” the ability to seek “remedies” under “other Federal laws protecting the rights of children with disabilities.”

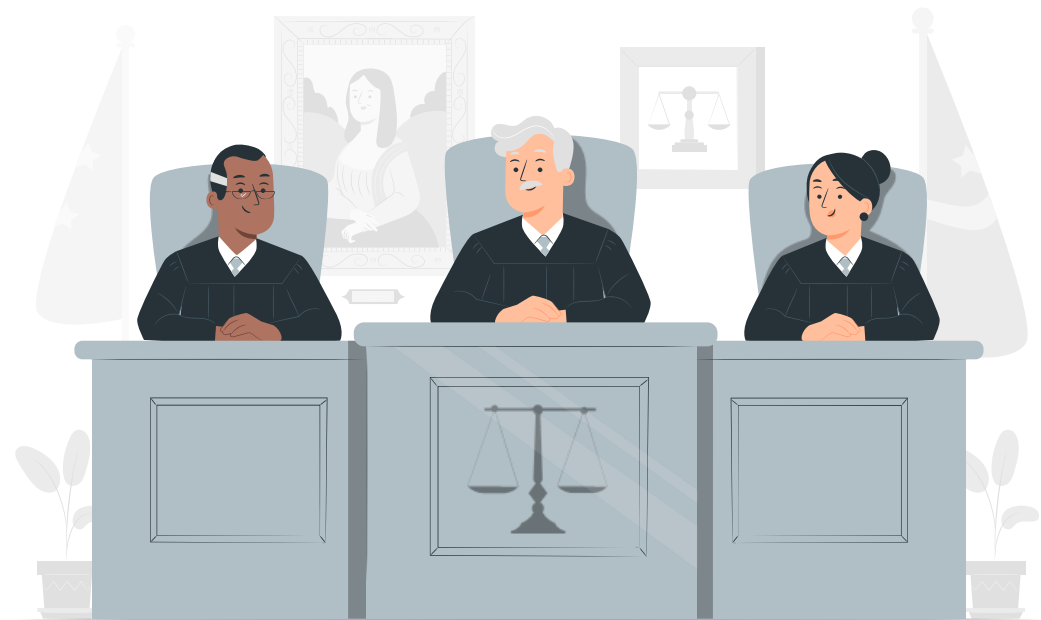
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Before filing a civil action under other federal laws “seeking relief that is also available” under IDEA, “the procedures under [§1415](f) and (g) shall be exhausted.”

Perez v. Sturgis Pub. Sch.

Holding:

IDEA's exhaustion requirement does not preclude Perez's ADA lawsuit because the relief he seeks (i.e. compensatory damages) is not something IDEA can provide.



Key takeaways

- IDEA exhaustion not required when:
 - The gravamen of their claim is not an allegation of a denial of FAPE (*Fry v. Napoleon*).
 - When the remedy sought by the plaintiff is not one offered by IDEA (*Perez v. Sturgis*).
- May expose districts to lawsuits that would have previously been barred.
- Minimize legal exposure for disability and special education claims.
- Consider adding waiver language to settlement agreements.

Section 504 Notice of Proposed Rulemaking



Religion

Groff v. DeJoy

143 S. Ct. 2279 (2023).

- Gerald Groff is an Evangelical Christian who worked for the United States Postal Service.
- Groff believes for religious reasons that Sunday should be devoted to worship and rest, not “secular labor” and the “transportation of worldly goods.”
- Received progressive discipline for failing to work Sundays and ultimately resigned.

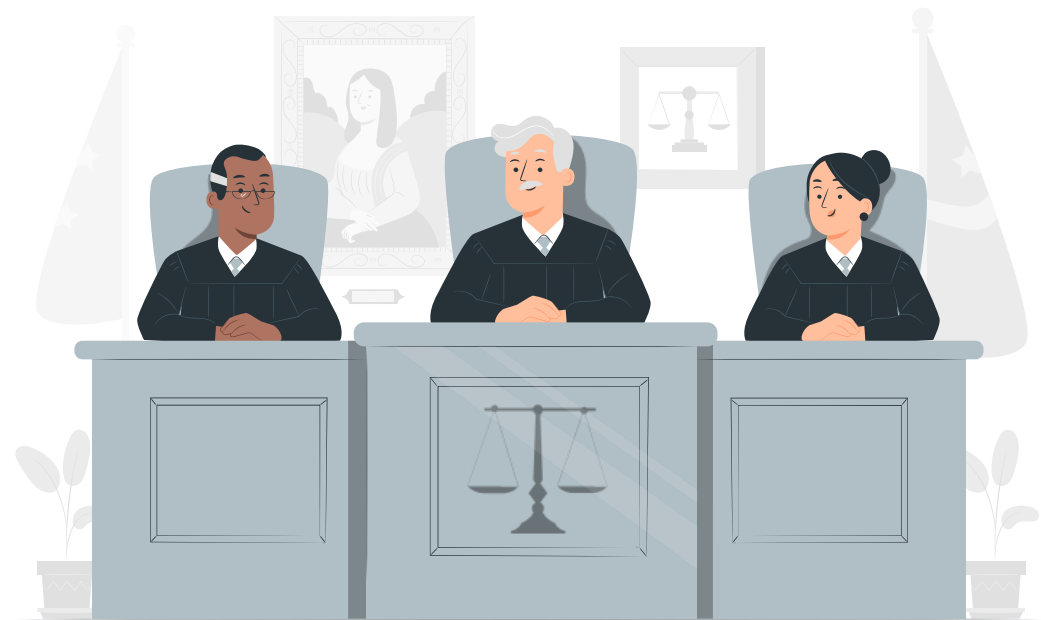
Title VII Analysis

- Requires employers to accommodate the religious practice of their employees unless doing so would impose an “undue hardship on the conduct of the employer’s business.”
- *Trans World Airlines, Inc. v. Hardison* (1977) – “undue hardship” means any effort or cost that is “more than...de minimis.”
- Issues:
 - Whether the court should disapprove the more-than-de-minimis-cost test for refusing Title VII religious accommodations.
 - Whether an employer may demonstrate “undue hardship on the conduct of the employer’s business” under Title VII merely by showing that the requested accommodation burdens the employee’s co-workers rather than the business itself.

Groff v. DeJoy

Holding:

- Showing “more than a de minimis cost” does not suffice to establish that an employer would suffer “undue hardship” when accommodating an employee’s religious practice.
- An “undue hardship” is shown when the burden of granting an accommodation would result in “substantial increased costs” in relation to the conduct of the employer’s particular business.



Key takeaways

- Review the accommodation at issue and its practical impact considering the nature, size and operating costs of the employer.
- Identify how the accommodation's impact on other employees affects the conduct of the business.
- Consider other options that may allow an employee to observe their religious practices without an undue hardship.

USDOE Guidance (May 15, 2023)

https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

- *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*
- Provides information on the current state of the law concerning prayer and religious expression in public schools.
- Applies the constitutional principles relating to prayer and religious expression in certain public school contexts.
- Reminds districts of their obligation to provide policy certifications.

State Legislative Trends

<https://canopyforum.org/2023/04/27/religion-in-state-education-policy/>

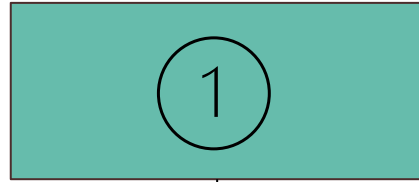
- Prayer and religious expression
- Curriculum and course offerings
- Religious displays in schools
- Regulations for religious schools
- Attendance and school calendars
- Chaplains serving as school counselors

Title IX



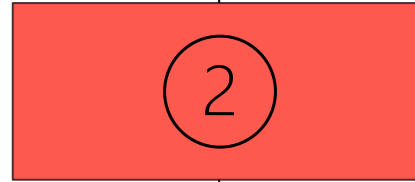
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX Topics



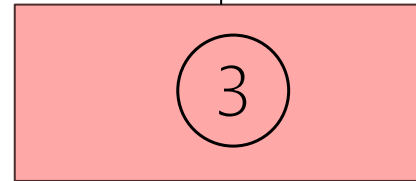
Sex-based harassment and discrimination

Establishing grievance procedures for investigating and responding to allegations of sex-based discrimination.



Equal opportunities in athletics

Providing equal athletic opportunities for all students, regardless of sex.



Transgender students

Identifying how Title IX's protections apply to discrimination based on sexual orientation and gender identity.

Updated TIX Regulations

<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-factsheet.pdf>

- **July 2022 NPRM**
 - Applies Title IX's protections to discrimination based on sex stereotypes, sex characteristics, pregnancy or pregnancy-related conditions, sexual orientation, and gender identity.
 - Replaces the current definition of sexual harassment with a broader definition of sex-based harassment.
 - Requires districts to address a sex-based hostile environment under its education program or activity, even if the sex-based harassment contributing to that hostile environment occurred outside the district's education program or activity or outside the United States.
 - Requires districts to provide supportive measures to students and employees affected by any type of sex discrimination.
 - Updates existing protections for students, applicants and employees who are pregnant or have pregnancy-related conditions.
- Anticipated release date of October 2023.

US DOE Guidance (Feb. 2023)

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-k12-athletic-resource-202302.pdf>

- Background on Title IX
- Evaluating your school's athletic program
 - Benefits, opportunities and treatment for boys and girls teams
 - Meeting students' athletic interests and abilities
- What to do if you think your school's athletic program violates Title IX

Updated TIX Regulations

<https://www2.ed.gov/about/offices/list/ocr/docs/t9-ath-nprm-factsheet.pdf>

- **Athletics NPRM**
 - Prohibits schools from categorically banning students from participating in sports programs based on their gender identity.
 - Allows schools to determine sex-related eligibility criteria that could limit or deny a student's eligible to participate on a team consistent with their gender identity.
 - Such criteria must, for each sport, level of competition or grade or education level:
 - Be substantially related to the achievement of an important educational objective and
 - Minimize harms to students whose opportunities to participate would be limited or denied.
- *Anticipated release date of October 2023.*

Transgender Staff/Student Case Law

1

“On the basis of sex”

Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020).
Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cty., 57 F.4th 791 (11th Cir. 2022).
A.C. v. Metro. Sch. Dist. Of Martinsville, 2023 U.S. App. LEXIS 19785.

2

Use of pronouns – First Amendment arguments

Parents Defending Edn. v. Olentangy Local Sch. Dist., 2023 US Dist. LEXIS 131707.
Ricard v. USD 475 Geary Cty., 2022 U.S. Dist. LEXIS 83742.
Kluge v. Brownsburg Cmty. Sch. Corp., 64 4th 861 (7th Cir. 2023).

3

Parental rights

John & Jane Parents 1 v. Montgomery Cty. Bd. of Edn., 622 F. Supp. 3d 118.
Foote v. Town of Ludlow, 2022 U.S. Dist. LEXIS 236102.
Parents Defending Edn. v. Linn-Mar Cty. Sch. Dist., 629 F. Supp. 3d 891.
Wiley v. Sweetwater Cty. Sch. Dist. No. 1, 2023 U.S. Dist. LEXIS 113818.



First Amendment


Garnier v. O'Connor- Ratcliff

41 F.4th 1158 (2022).

- Two school board members created public social media pages to promote their campaigns for office.
- After they assumed office, the board members used their social media pages to interact with members about board business.
- Two parents frequently left comments critical of the board and its members.
- The board members eventually blocked the parents entirely from their social media pages.
- Issue:
 - Whether a public official violates the First Amendment by creating a publicly accessible social media page related to their official duties and then block certain members of the public from that page because of the nature of their comments.

“Acting under color of law”

Is there such a close nexus between the school board and the challenged action that the seemingly private behavior may be fairly treated as that of the school board itself?

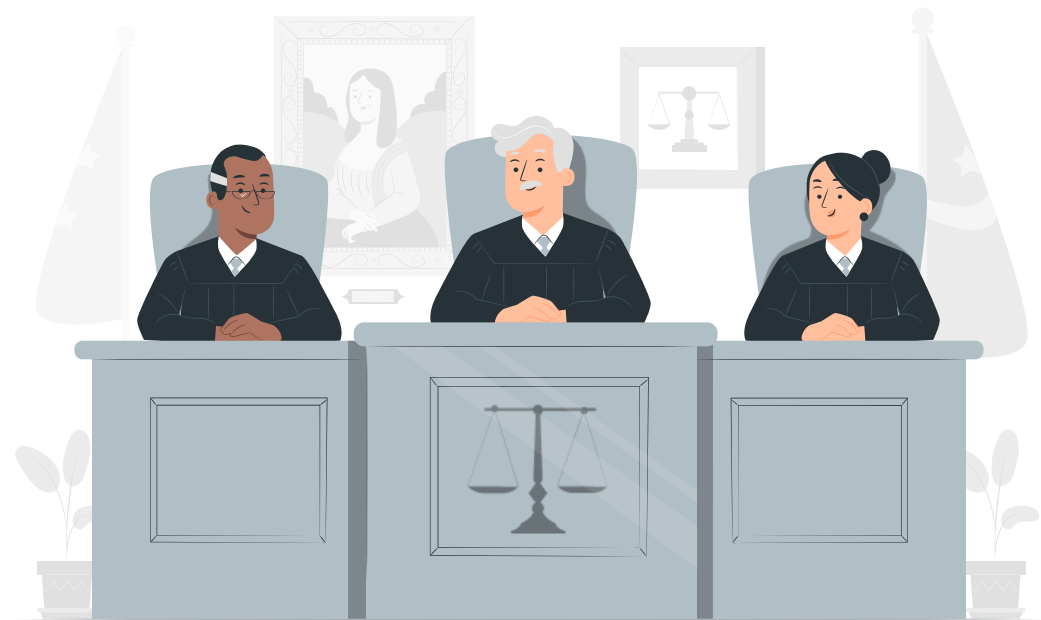


Acting under color of law	Acting as a private citizen
<ul style="list-style-type: none">• Identified themselves as government officials.• Content related to official board business in a meaningful way.• Used the page to “influence the behavior of others.”	<ul style="list-style-type: none">• Set up as personal campaign pages designed only to advance their political careers.• The district provided no financial support or authorization for the pages.• Can’t constitute board action because they can only act at a properly convened meeting of the board.

Garnier v. O'Connor-Ratcliff

Holding:

School board members violated the parents' First Amendment rights by blocking them from the board members' social media accounts.



Garnier v. O'Connor-Ratcliff

- Board members' social media pages were open and available to the public without any restriction on the form or content of the comments.
- They never adopted any formal rules of decorum or etiquette for their pages.
- The decision to block the parents from their social media pages were not narrowly tailored to serve a significant government interest.



Key takeaways

- Be mindful of how public officials set up and use their social media accounts.
- Keep separate personal and business social media accounts.
- Consider using a disclaimer and adopting rules of decorum that would be “sufficiently definite and objective to prevent arbitrary or discriminatory enforcement.”

Kutchinski v. Freeland Cmty. Sch. Dist.

69 F.4th 350 (2023).

- A high school student created a fake Instagram account at home impersonating one of his teachers.
- Two friends posted “graphic, harassing and threatening” content directed toward three teachers and a student.
- Student was issued an out-of-school suspension.
- Issue:
 - Whether the First Amendment prohibited the district from punishing the student for his involvement in with the Instagram account.

Remember the Cocoa Hut (*Mahanoy*)

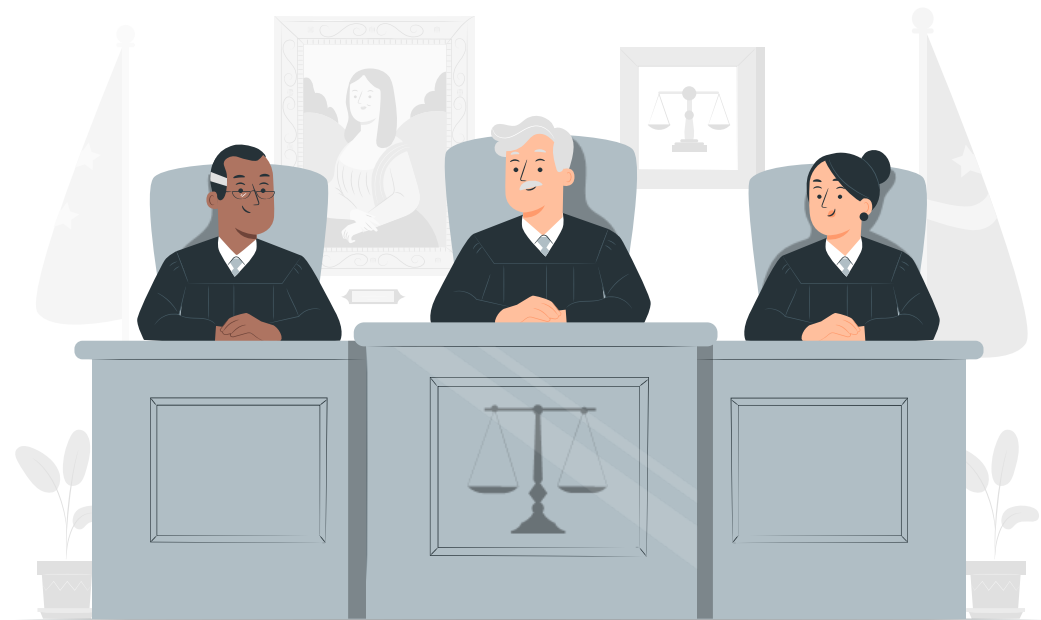
- Court directed schools to consider three features of off-campus speech:
 - The extent a school stands in loco parentis
 - The effect on students' ability to engage in political or religious speech that occurs outside a school program or activity
 - The school's interest in protecting a student's unpopular expression
- Schools may restrict student speech if it "would substantially interfere with the work of the school or impinge upon the rights of other students."
- A school can also regulate student speech where it reasonably forecasts such disruption.



Kutchinski v. Freeland Cmty. Sch. Dist.

Holding:

District had the authority to regulate the student's off-campus speech.



Key takeaways

- Does the speech:
 - Include threatening or harassing speech directed at students or officials?
 - Cause a substantial disruption?
- Expect more off-campus student speech cases!



Removal of books

- *Pen America Center v. Escambia Cnty. Sch. Dist.*, N.Dist. Fla. No. 23-cv-10385 (May 17, 2023).
- *Little v. Llano Cnty.*, 2023 U.S. Dist. LEXIS 54716 (2023).
- OCR Resolution Agreement with Forsyth County Schools





Questions?

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