Legal Update

Buelow Vetter
Buikema Olson & Vliet, LLC

U.S. Supreme Court Decides Service Animal Case

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Today, the Supreme Court of the United States issued a decision in *Fry v. Napoleon Community Schools, et al.*, unanimously concluding that the exhaustion requirement of the Individuals with Disabilities Education Act (IDEA) does not apply if the core basis of a parent's lawsuit is something other than the denial of a free appropriate education (FAPE). This decision will likely result in more complaints proceeding directly to federal court under Section 504 of the Rehabilitation Act (Section 504) or the Americans with Disabilities Act (ADA), without first being heard in an IDEA due process proceeding.

In *Fry*, the student used a service dog, named Wonder, to assist her with her daily life activities. The school initially allowed the student to bring Wonder to school on a trial basis, but the school ultimately excluded Wonder from school on the basis that Wonder could not provide the student with any support that the student's human aide could not. The parents filed a lawsuit in federal court under Section 504 and the ADA. The district court granted the school district's motion to dismiss the lawsuit, holding that the parents were required to exhaust their administrative remedies under the IDEA before filing a lawsuit in federal court. The Court of Appeals for the Sixth Circuit agreed. The parents appealed to the Supreme Court of the United States, arguing that because they were requesting money damages, a remedy not available under the IDEA, the exhaustion requirement did not apply.

The Court found in favor of the parents, concluding that the exhaustion requirement hinges on whether a lawsuit seeks relief for the denial of FAPE. If a lawsuit is brought under Section 504 or the ADA, and the parents are not seeking a remedy for the denial of FAPE, then the exhaustion of administrative remedies under the IDEA is not necessary. In other words, whether the exhaustion requirement applies will depend on whether the core basis of the lawsuit is something other than the denial of FAPE. In order to make this determination, the Court suggested asking two questions: First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school? Second, could an adult at the school have pressed essentially the same grievance? If the answers to those questions are yes, the core basis of the complaint is unlikely to be the denial of FAPE.

It is important to note that the Court expressly declined to rule on whether the exhaustion requirement applies to a lawsuit that alleges a denial of FAPE but seeks a remedy not available under the IDEA, such as money damages.

As a result of the Court's decision, parents may be more likely to file a lawsuit in federal court under the IDEA or Section 504 without first requesting a due process hearing under the IDEA and Chapter 115 of the

Wisconsin Statutes. It is also possible that plaintiffs lawyers will attempt to use this decision to circumvent the administrative process in other situations as well. For disputes involving service animals, mediation is often helpful in resolving the dispute before it escalates to the point of a lawsuit being filed. It is also important to review your policies and procedures relating to service animals and other requests for accommodations. If you have any questions about this Legal Update, or a student's right to bring a service animal to school, please contact Alana Leffler at aleffler@buelowvetter.com or 262-364-0267, or Gary Ruesch at gruesch@buelowvetter.com or 262-364-0263, or your Buelow Vetter attorney.

Buelow Vetter Buikema Olson & Vliet, LLC
20855 Watertown Road
Suite 200
Waukesha, WI 53186
Phone: 262-364-0300
Fax: 262-364-0320
Email: info@buelowvetter.com
Website: www.buelowvetter.com