

Disability Rights Today Episode 8: Perez v Sturgis Public Schools Transcript

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Speaker: Ellen Saideman, Disability Rights Lawyer – Law office of Ellen Saideman

Host: Peter Blanck, Chairman Burton Blatt Institute Syracuse University

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Barry Whaley:

Hi, everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at **Barry Whaley:**

Hi, everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, I want to welcome you to this episode of Disability Rights Today. I'm Barry Whaley, I'm the program director at the Southeast ADA Center.

The Disability Rights Today podcast is a series of in-depth discussions and resources on the facts, issues and arguments of court cases and their potential impact on the legal rights and the lives of people with disabilities. You can listen any time to these interviews with plaintiffs, attorneys and subject matter experts to keep current on the latest legal development involving the ADA and disability rights.

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In this Disability Rights Today podcast, we'll discuss the March 21, 2023 decision by the United States Supreme Court in Perez versus Sturgis Public Schools.

In this decision, the court unanimously decided that individuals who have entered into a settlement resolving their Individuals with Disabilities Education Act, or IDEA, claims can also pursue claims for money damages against school districts under the Americans with Disabilities Act without having exhausted the administrative process under IDEA. This decision reverses one from the Sixth Circuit Court of Appeals.

Our guest today is Ellen Saideman, an attorney from Rhode Island who focuses much of her practice on the educational rights of students with disabilities and their families.

In Perez versus Sturgis Public Schools, she represented Mr. Perez in the Sixth Circuit Court of Appeals in his claims against the Sturgis Public School system in Michigan.

As always, our host for today's episode is Dr. Peter Blanck, chairman of the Burton Blatt Institute at Syracuse University. So, Ellen, welcome to the show and Peter, mic is yours.

Peter Blanck:

Hello, Ellen.

Ellen Saideman:

Hello, Peter.

Peter Blanck:

How are you today? It's such a pleasure always to have time with you. I know how busy you are in your litigation practice. You've been working for years representing individuals with disabilities, particularly in the special education area. And your work is well known across the country, so it's a great pleasure to have you with us today in this brief half-hour interview.

So, Ellen, how did you get started in this field?

Ellen Saideman:

Well, when I went to law school, I wanted to do public interest work, and I worked with the NAACP and with the NOW women's rights group and other groups.

And when I was looking, I went to work for a big firm, and while I was there, I wound up working for the New York City Commission on Human Rights.

While I was there, I learned that disability rights was an area where people were very unaware that people with disabilities had any rights. Employers would write in and places of public accommodation would write in and say, "No, we didn't hire this person because this person was blind." Or, "We wouldn't give a job to somebody who is deaf." And so, I got very interested in disability rights for my work there.

And then I went to work for New York Lawyers for the Public Interest, which is one of the law firms that, at that time, did work for the Protection Advocacy Program, it's a federally funded program that provides legal assistance to people with disabilities. And so, I did disability rights work first in New York, and then in Florida.

And then I taught for a while. When I moved to Rhode Island and when I decided to go back to practice, I decided that this would be a good area for me to work in, would be to open my own practice, largely special ed, but also doing other disability rights and public benefits type cases.

Peter Blanck:

Give us a high-level overview for our listeners, just so we're all on the same page, of the foundational pieces of the Individuals with Disabilities Education Act, IDEA, and how it was relevant in this case.

I think most of our listeners are familiar with the ADA and Section 504, but give them a quick reminder about the purpose of these laws, particularly the IDEA, please.

Ellen Saideman:

IDEA was enacted by Congress. First, it was called the Education of the Handicapped Education Act in 1975 because there was a time when people with disabilities were not allowed to go to school.

Judy Heumann tells a story, as somebody who was a wheelchair user, how she was not allowed to go to kindergarten and turned away from public school. So, there was a real widespread problem that students with disabilities were not allowed in schools or, if they were allowed, they were being denied a free, appropriate public education.

Congress passed this law to make sure that all children in America who had disabilities were able to get free, appropriate public education.

What's important about the statute is it actually covers students from 0 through age 22. There's a special part of the statute called Part C that provides for early intervention services for kids from birth.

Some children are identified when they're born, or even before they're born, that they're going to have a disability and they get services from birth onward. They're first eligible for an IEP, or an individualized education program, from their school at age three. And so, it provides preschool services, and then it provides services through elementary and high school. And for students who don't get their regular diploma, it can last until they're 22. And in some states, longer.

I think it's really important to understand that this statute is what we call an entitlement statute. That means that all you have to show is a student has the kind of disability that's covered.

So, for my client, Miguel Perez, was he was deaf, so he obviously was covered and then he is supposed to get a free, appropriate education that's individualized to his needs. And that's all you need to show for this statute, is that you have a disability that requires special education, and you are a resident of the school district. Then you should get the services that you're entitled to.

Peter Blanck:

Did you start this case from the ground floor? I know that you argued it before the Sixth Circuit. You were obviously counsel before the United States Supreme Court. Somebody else argued it. Tell us about the case and the process it took to get through the appellate system, all the way up to the United States Supreme Court.

Ellen Saideman:

Okay. Miguel was a student who arrived in Sturgis Public Schools at age nine from Mexico with his family who only spoke Spanish. And during the course of his education until it was time for high school, he got a report card with A's, he was on the honor roll. His parents thought everything was working out well.

When it was time to talk about high school, the school explained to them that he wasn't going to be eligible for a regular diploma because he actually had not really met the educational criteria for getting a diploma.

At that point, his family reached out to the Michigan Protection Advocacy Agency, now known as Disability Rights Michigan, and they get involved with the National Association for the Deaf in representing Miguel.

And he had a really strong case under the IDEA because he was deaf and he had not gotten instruction in sign language. And so, he had not learned much of anything, even though he'd been going to school for a dozen years.

At that point, they brought a case in the administrative process and they raised claims under the Michigan State law as well as the IDEA, ADA and 504. The school district got the ADA and 504 claims dismissed because in Michigan, the hearing officer does not have jurisdiction over those claims, and then offered a settlement to give complete relief under IDEA.

There's a provision of the statute that says that if the school district offers complete relief and the parent rejects it, then the parents don't get paid for their attorney's fees going

forward. So, you get your attorney's fees from the time you filed the hearing, but if they give you such a good offer, it's like an offer that's too good for you to turn down.

The offer was a good offer. They settled the IDEA case only and then filed for ADA and 504, at which point the school district was like, "Gotcha! You can't go there because you settled your IDEA case."

I got involved in the district court proceeding after the magistrate had recommended that the case be dismissed. I added some additional information to the court and we made arguments that it would've been futile for Miguel to bring his ADA and 504 claims in the administrative hearing because the hearing officer had no power to give him damages. And so, there was no point in him doing that. Plus those claims had been dismissed, so what else was he supposed to do?

But the district judge ruled for the school district, and then we argued it to the Sixth Circuit where I briefed the appeal and argued that Miguel had not needed to exhaust administrative remedies for his claim for money damages.

And we also argued, in addition to that, it would've been futile for him to proceed that way because he shouldn't have to bring a hearing and go to a wholly unnecessary hearing on his IDEA claim to bring a completely different legal claim under ADA and 504.

In that case, we lost, and the circuit court judge who wrote the case, Judge [inaudible 00:10:55], not only thought that our claim wasn't futile, he also basically said there was no futility exception to exhaustion at all under IDEA and that you had to go to a hearing no matter what.

At that point, we felt there was what's called a split in the circuits. That means that courts in the United States, the federal courts, are divided into 12 different circuits geographically. Miguel's case was in the Sixth Circuit, which includes Michigan.

And the Supreme Court will take a case if they think there's what's called a split in the circuits. Some circuits go one way, others go a different way, and therefore the Supreme Court needs to figure out what the right rule is.

So, in our case, we said that we wanted to bring the case to the Supreme Court. Two issues. One, there was a futility exception under IDEA and we should be able to bring this case even though Miguel settled the IDEA claim. And two, we argued you should be able to get money damages and bring a claim for money damages without having to go to a hearing because the hearing officer doesn't have the ability to award money damages.

So those were our two issues. The Supreme Court agreed to hear both issues on what's called certiorari. Both issues were before the Supreme Court.

Peter Blanck:

Well, now, it was a unanimous decision, so kudos to you.

Tell us what the court decided, and what are the implications of the decision for other kids around the nation?

Ellen Saideman:

Well, the Supreme Court decided not to decide the futility issue, and instead to decide what was really a straight tech issue about the text of the statute. And this was a question that the court had considered and not decided in the Fry case, a decision it made in 2017.

So what it said in the case was, if the parents are seeking money damages and that's all they're seeking under the ADA, then they can go straight to federal court and they don't have to worry about exhausting administrative remedies.

This is important for a couple of reasons. One, it means that people in Miguel's situation can settle their IDEA claims, get full benefits of their IDEA claims, and proceed with their damages claims assuming the school district agrees to such settlement. One outcome of the case may be that school districts will want to get comprehensive settlement agreements that settle both ADA and 504 claims as well as IDEA claims, and that's a matter of settlement negotiations and how those proceed. But for cases in which there are damages, you can bring the damages-only claim.

Now, in most cases, if a student is still in the school district, the parent is also going to have what we call claims for injunctive relief, meaning the parents are going to want the school districts to improve the programs that the student is getting. So if, like when we started our case, Miguel was in the Sturgis Public Schools and not getting the sign language interpreter that he needed, and he had a claim under IDEA, not only for getting special education services going forward, but you actually have a claim for what's called compensatory education. That if you don't get the education you're entitled to, you can get the school district to make up for not giving you the education that you're entitled to through what's called compensatory education.

Let's say... Easy case. Student doesn't get speech and language therapy for six months because the teacher went out on leave, on medical leave, and there was no substitute for the speech language therapist. Well, you could get six months of speech therapy as compensatory education. So, that's a claim that you can get under IDEA. The cases that are going to go straight to court or cases where the parents are seeking damages and don't really have a claim for other relief that they want to bring, either because they've succeeded it through settlement or for another reason. So that that'll be what happens.

Peter Blanck:

You mentioned the Fry case, which, of course, was another important case. Do these two together form a very strong combination of principles?

Ellen Saideman:

Yes, they do. The two cases form some important principles. I think it's important to realize that virtually all students who are protected under the Individuals with Disabilities Education Act are also protected by 504 and ADA.

In other words, if you have a disability that requires special education, your disability probably also impairs substantial life activity. So you're eligible under both statutes and you would have claims under both statutes theoretically. So that, I think, is important to know.

What Fry and Perez tell you together is that if you have an ADA and 504 claim and all you want is money damages, you can go straight to federal court. It also tells you that if you're seeking injunctive relief and your claim does not overlap in a substantial way with a special education case, so it has a gravamen, is the legal term the court uses, of special education, then you can go straight to federal court as well.

But if you have a claim where there's a lot of overlap, where what you're seeking overlaps with special education and it overlaps with the relief you could get under IDEA, so you might be able to get compensatory education, you might be able to get an order from court for injunctive relief to get those ADA, 504 accommodations, now, in that case, you probably will want to go to the administrative hearing to get an order under IDEA for relief in that case.

Peter Blanck:

Does this affect kids in private schools as well?

Ellen Saideman:

No, it does not affect kids in private schools because kids in private schools have... If they're in private schools not pursuant to a IEP, in other words, their parents put them in a private school because they want them to go to a private school and their parents are paying for the private school, then they're not eligible for a claim under IDEA. So, they're not subject to exhaustion of administrative remedies.

And also, it's important to know that their claims are different. The claim that Miguel had for damages was under Title II of the ADA, which applies to public entities. And public school districts are public entities, but a private school is not a public entity. So, your claim against a private school would go under Title III of the public accommodations provisions of the ADA, and money damages are only allowed there if the US Department of Justice brings the case. A private lawyer will not be able to get money damages in that case.

Peter Blanck:

Were you surprised it was a unanimous decision?

Ellen Saideman:

I was more surprised that they decided the case on the money damages issue. That it was unanimous... Both the Fry case and another case involving special ed called Endrew F. were both unanimous, ain't nothing because at that time, there was vacancy on the Supreme Court. And so, since the last two special ed cases were unanimous, it was not that surprising.

It was particularly not surprising after the argument because going into the argument, there had been a decision that Justice Gorsuch had written when he was in the 10th Circuit, and that was decided by school districts all the time as showing that there was no futility exception and you had to exhaust administrative remedies.

But at the argument, Justice Gorsuch said, when the school district lawyer referred to that case he'd written, he said, "Caution. Proceed with caution, because I wrote that case when I was bound by 10th Circuit precedent, and I'm not bound by 10th Circuit precedents. This case is excellently lawyered. Whereas in that case, I was confined to the arguments the other lawyers made."

So I think that when he said that, it was clear to me that it might be possible for him to rule in our favor and in Miguel's favor. And in fact, he wrote the decision.

Peter Blanck:

Interesting.

Ellen Saideman:

So that was for me, I think, the thing that was most significant. I think there were some tough questions asked by Justice Alito and Justice Roberts of the lawyer for our side, Ramon Martinez, who was Miguel's lawyer at the Supreme Court.

But Alito also asked a tough question of the school district, which was really, in a case like this where the school district could get a general release, why should the rule favor the school district as opposed to the parents, given the purpose of the statute, which is of course to help students? I thought it was possible we could get a unanimous decision. I was excited when we did, but it was possible.

Peter Blanck:

Interesting. Let's just take a brief break, from Barry Whaley.

Barry Whaley:

Thank you, Peter. Disability Rights Today listening audience, if you have questions about this topic or any other Disability Rights Today topic, you can submit your questions online at adasoutheast.org, or you can call the Southeast ADA Center at 404-541-9001.

Peter Blanck:

Welcome back to the show. I'm Peter Blanck, chairman of the Burton Blatt Institute at Syracuse University with an important guest today on our podcast, attorney Ellen Saideman, who represented Miguel Luna Perez, a deaf student in the Perez v. Sturgis Public Schools case before the United States Supreme Court. We've been talking about this decision.

And Ellen, what's next on the agenda for great attorneys like yourself? What future areas need to be primed and developed at the intersection of the IDEA and the ADA and 504?

Ellen Saideman:

Well, there's a lot of very basic things. I mean, just making sure that students like Miguel who are deaf or have other disabilities get the services that they're entitled to under the law. I think it's really important.

One of the things I find this area of law so compelling is it just makes a huge difference in a student's life, then they get a free, appropriate public education. I mean, I've had

parents call me and say that because I was able to help them get the school district to comply with the law, their students were able to graduate from high school, go off to college, get jobs. And it makes a huge difference in their lives.

So I think that there's a lot of work that needs to be done in making sure that school districts are complying with the law and that students get the education that they're entitled to.

Peter Blanck:

One thing I've kind of scratched my head about, Ellen, if you don't mind me taking the liberty to ask you, I've seen situations where school districts say a free and appropriate public education can mean a segregated school environment for a child. That is, a special school in a non-integrated setting. Is that a trend that's going to hold? Is that something that makes sense in the context of what we're talking about here?

Ellen Saideman:

I think that's a very challenging question that you're asking. There are many people who have very strong views about a particular children need, and the statute, IDEA, does require school districts to provide education in the least restrictive alternative that's appropriate for a particular student. So it all comes down to, what is appropriate for a particular student?

I've seen, sometimes, parents and advocates argue for students to be in the general ed population going to school, and others argue for something different.

For example, in the deaf community, there's a really great novel called Deaf Biz, that was recently released, about a story of a deaf student going to a deaf school. And there are people who feel that having deaf schools is very helpful for deaf students so that they can communicate with others, and that being the only deaf student in a hearing school with hearing students is very isolating. So, I mean, it's a very complicated area, and there's no clear-cut answer to your question.

Peter Blanck:

Well, that's as good as any place to stop because that means we can have you on the show again, Ellen, to see if we can explore questions that don't have such immediate answers.

I want to thank you, really, for your work, for your leadership, and for sharing your experiences with our audience today. We're widely listened to by an array of parents and advocates and lawyers, and so, thank you and kudos to you on your victory.

Barry, I turn the mic back over to you.

Barry Whaley:

Thank you, Peter. Ellen, thank you so much for being with us today.

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Our producer is Celestia Ohrazda, with Cheri Hofmann, Mary Morder, Marsha Schwanke, Chase Coleman, and me, I'm Barry Whaley. Our music is from Four Wheel City, the Movement for Improvement. Thanks for listening today. And remember, your rights matter.

4 Wheel City: (rapping)

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Contact for More Information or Assistance:

Southeast ADA Center

Email: ADAsoutheast@law.syr.edu

Phone: 404-541-9001