The Past and Future of Administrative Exhaustion

By Judges Ian Spechler and Steve Elliot

While the requirement that parties exhaust their administrative remedies before proceeding to a court of law has long been established, recent case law in a particular area of law may portend an interesting sign of the future of administrative exhaustion. Under the Individuals with Disabilities Education Act (IDEA), parties are required to request an administrative due process hearing before they can proceed to federal court on a matter under the IDEA. Recent case law has left parties unsure of both whether their matter requires exhaustion and whether they can settle any portion of it while still satisfying the exhaustion requirements. The result may be an increase in cases at the administrative level and increased work load for parties. This paper will first examine the history of administrative exhaustion broadly before focusing on its history under the IDEA. Then we will examine recent case law before describing its current and future effects under the IDEA and potentially more broadly.

What is administrative exhaustion?

A rule requiring administrative exhaustion before obtaining a judicial remedy is "long settled."[1] The doctrine of administrative exhaustion means that a party cannot obtain judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.[2] The requirement that parties exhaust their administrative remedies serves two primary purposes: first, exhaustion gives an administrative agency an opportunity to correct its own errors before it is "hauled into federal court" and thus discourages disregard of the agency's procedures. The exhaustion doctrine is really an expression of the administrative agency's autonomy.[3] Second, requiring administrative exhaustion promotes efficiency since claims can be resolved more quickly and, even when a case is not finally resolved at the administrative level, administrative review creates a useful record for the federal court reviewing the case.[4]

In order to allow administrative agencies an opportunity to fairly resolve disputes and to offer predictability to litigants and administrative agencies, courts should only "topple" administrative agency decisions when the agency

[1] *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938).
[2] *Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006).
[3] *McKart v. United States*, 395 U.S. 185, 194 (1969).
[4] *Woodford*, 548 U.S. at 89.

has not only erred, but has erred against an objection offered at the appropriate time under the relevant administrative rules.[5]

The history of administrative exhaustion under the IDEA

Congress first codified what today is the Individuals with Disabilities Education Act (IDEA) in 1975 as the Education for All Handicapped Children Act. This built on previous efforts of Congress to ensure children with disabilities received an appropriate education. In 1966, Congress first offered federal aid to states to assist children with disabilities when it amended the Elementary and Secondary Education Act of 1965 to send grant money to states to educate children with disabilities. In 1974, Congress greatly increased federal funding to the states and, for the first time, stated that its goal in providing federal aid to states was to provide "full educational opportunities to all [children with disabilities]."[6]

The Education for All Handicapped Children Act of 1975 built on Congress's 1974 effort by adopting specific conditions to receive federal funds. The Act provided federal money to states to assist in educating children with disabilities, provided that states met certain conditions to ensure all students with disabilities received a free, appropriate public education (FAPE).[7] Though it created individual rights for children with disabilities and an administrative structure for adjudicating those rights, the law did not contain any requirement to exhaust administrative remedies before seeking a remedy for a violation of those rights.

In 1984, the Supreme Court examined the exhaustion issue in detail. *Smith v. Robinson* involved a Petitioner's efforts to make claims under not only the Education for All Handicapped Children Act, but also Section 504 of the Rehabilitation Act of 1973 (Section 504) and Section 1983 of the Civil Rights Act of 1964 (Section 1983). The Court ruled that, as long as a remedy under the Education for All Handicapped Children Act was available, a petitioner could not pursue remedies under any other parallel statute.[8] The IDEA[9] was the "exclusive avenue" of relief for a student with a disability to obtain relief for a school district's alleged violation of the student's rights.[10]

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[5] *United States v. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952).
[6] *Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 179-81 (1982).
[7] *Id.*
[8] *Smith v. Robinson*, 468 U.S. 992, 1021 (1984).
[9] The Education for All Handicapped Children Act was renamed the IDEA in 1990.
[10] *McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d 640, 644 (5th Cir. 2019).

Congress responded to this judicially-created rule. In 1986, Congress passed the Handicapped Children's Protection Act of 1986. In that Act, Congress responded to *Smith* by stating explicitly that petitioners were not limited in their right to pursue relief under other statutes while also pursuing a remedy under the Handicapped Children's Protection Act of 1986.[11] The statute read—and still reads—in relevant part, "Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [Americans with Disabilities Act of 1990], [Section 504], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the [IDEA's administrative procedures] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA]."[12] In 1990, Congress renamed the Handicapped Children's Protection Act as the IDEA. It remains the IDEA today.

Administrative exhaustion under the IDEA: *Fry*, *McMillen*, and *Heston*

The need to exhaust is now firmly established under the IDEA. The way exhaustion occurs is with an administrative due process hearing. A parent or school district may seek an administrative due process hearing on any matters related to the identification, evaluation or educational placement of a child with a disability or the provision of a free, appropriate public education (FAPE).[13] A school district may request a due process hearing to challenge the parental right to an Independent Educational Evaluation (IEE)—an evaluation to which parents are entitled if they disagree with a school district evaluation—at school district expense.[14] In addition, a parent may request an expedited due process hearing when the parent disagrees with a disciplinary placement or the manifestation determination related to a disciplinary decision. A school district may also request an expedited due process hearing when it believes that maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or other.[15]

These are the only legal issues an administrative law judge may resolve in a special education hearing under the IDEA. The administrative law judge has no jurisdiction or authority to make findings of fact, conclusions of law,

[11] *Fry v. Napoleon Cmty Schs.*, 137 S.Ct. 743, 750 (2017).
[12] *Id.*; 20 U.S.C. § 1415(l).
[13] 34 C.F.R. §§ 300.503(a)(1)(2); 300.507(a); 19 Tex. Admin. Code § 89.1151(a).
[14] 34 C.F.R. § 300.502(b)(2)(i)(3).
[15] 34 C.F.R. § 300.532(a); 19 Tex. Admin. Code § 89.1191.

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