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Editor of the Month:

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I am pleased to serve again as the Editor of the Month for the FDCC’s Civil Writes newsletter. Like last month, we are examining a new decision from the U.S. Supreme Court but this time we are looking at a school law topic. In June, the Court issued a decision which lowered the standard required for education-related damages claims under Section 504 of the Rehabilitation Act, *A.J.T. v. Osseo Area Schools*. I’ll explain what that decision means and what it doesn’t. Because I covered a school law topic, it only made sense to profile another school lawyer. I am happy to share a profile of fellow section member, Jean Faure.

The Committee Chairs are grateful for the contributions and feedback from many of our members and are appreciative that the newsletter has been so well received.

We hope you enjoy!

Committee Chair - Nathaniel Jordan

Ex Officio – Jeff Lowe

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Megan Collucio

Andrew Rutens

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FEATURED SECTION MEMBER – JEAN FAURE



Since the issue of the month emerges from school law, it made sense to feature a fellow school lawyer from the Civil Rights and Public Entity Liability Section. In this regard, Jean Faure instantly came to mind even though I have never met her in person. I came to know Jean the way I have come to know many other members of the FDCC: online. Jean and I were both in national organizations, including DRI and the National School Boards Association Council of School Attorneys. Though Jean practices in Montana, a state very far away from Kentucky and Ohio where I practice, I instantly saw that she was quick to offer a joke, a handy case citation, or helpful analysis with tricky legal issues.

In fact, despite being very busy with preparations to speak at the FDCC Annual Meeting next week, Jean was ready to jump in to help explain the *A.J.T.* decision from the Supreme Court that I cover below. I quickly let Jean off the hook and explained that I was only planning to feature her, but not before she shared a helpful blog post on the topic. All of this is to say that Jean is a knowledgeable school lawyer and the kind of person who is ready to help a fellow FDCC member.

To offer some broader biographical information about Jean, she is a founding member of Faure Holden Henkel Tarrazas P.C. in Montana. She practices in the



areas of school law, litigation, and employment law. She serves as legal counsel for schools and other public entities throughout the state of Montana in a variety of areas, ranging from special education, personnel and employment, and Title IX matters. Jean has a long list of accomplishments, including being repeatedly named a Super Lawyer, one of the Top 50 Female Super Lawyers in Montana, and Best Lawyers in America's Employment Lawyer of the Year in Montana and the Great Falls Area.

Jean is also active in her community and the legal profession. She has volunteered for the Special Olympics and has been a member of the FDCC for over ten years. Jean is also an active member of DRI and is a Past President of the Montana Association of Defense Trial Attorneys. Last year, Jean was selected to serve on the Board for the American Board of Trial Attorneys (ABOTA) and she was honored with the Professionalism Award from the Montana State Bar Association.

As you will probably gather if you are lucky enough to see Jean speak at the upcoming Annual Meeting, Jean is a frequent speaker and writer on topics relating to employment and school law. She is a person who is always in the know on emerging issues and willing to share ideas with other school law and local government lawyers. I'm pleased to introduce her to you this month. If you see Jean at the next Meeting, go and say hello and talk with her about school law because you are bound to learn something new and probably will make a new friend.

ISSUE OF THE MONTH - *A.J.T. v. Osseo Area Schools* - SCOTUS Lowers the Bar but Raises Awareness for Section 504 Educational Damages Claims

One of the challenges I faced when I first started practicing in school law and handling special education issues was understanding the differences between Section 504, the ADA, and the IDEA. Though I always get nervous when the Supreme Court takes any new school law issue, the one good thing about its latest decision, [*A.J.T. v. Osseo Area Schools*, No. 24-249 \(decided June 12, 2025\)](#) is that it reveals that federal courts have struggled to separate these statutes as well.



The Intersection of Section 504, IDEA, and the ADA

To understand why this confusion exists, an overview of Section 504, the IDEA, and the ADA may be helpful. All the statutes each establish disability rights, including in educational settings. Despite differences, they can each arise independently or together when it comes to the claims of students with disabilities. In fact, both Section 504 and the IDEA require the provision of FAPE (a free appropriate public education) which includes the development of educational, or accommodation plans for students.

For most of my practice, Section 504 was regarded as the “light” version of the disability statutes. It usually required only the provision of accommodations, was less frequently invoked, and it lacks the complex remedial and administrative scheme which exists under the IDEA. More recently, though, Section 504 has gained prominence. The public and lawyers have greater awareness about the dual requirements in Section 504, including access/nondiscrimination and FAPE. This has meant that formal and state complaint processes have been invoked more frequently to address things like alleged harassment and discrimination based on disability. In addition, Section 504 has become a formidable litigation tool even in matters arising out of special education and the requirement to provide a FAPE.

How Section 504 Gained Prominence

In part, the rise of Section 504 can be attributed to the Supreme Court’s decisions. As most school lawyers know, one of the reasons that Section 504 was not used as frequently in the past is practical. The IDEA has more extensive procedural requirements and safeguards, which can result in costly administrative litigation and awards for attorney fees and educational services. Generally, however, pure damages awards under the IDEA are not available. Section 504, on the other hand, allows for compensatory damages awards.

Despite this, Section 504 was not always used because claims arising under that statute were often blocked under the IDEA’s exhaustion requirement. For many years, courts assumed that Section 504 claims relating to FAPE or special education could not be pursued until the IDEA issues were first asserted through an administrative due process hearing. This changed a few years ago when the



Supreme Court issued a decision, [*Fry v. Napoleon Community Schools*, 580 U.S. _____, 173 S.Ct. 743 \(2017\)](#), which held that Section 504 claims, including those for damages, could proceed directly to court if the gravamen of the complaint was not one for which IDEA relief was available.

Even if you don't remember this case, you certainly remember the plaintiff. You may recall seeing an adorable picture of a young girl with her service dog in publications across the nation as the case was argued and decided by the Supreme Court. Yes, the case was about whether the girl could use Section 504 to more promptly secure an injunction to bring her service animal to school. The media and public fell in love with the student's (and dog's) story and SCOTUS loved the legal argument. They held that students and parents could choose to go straight to court without "passing go" by first participating in a costly due process hearing and various levels of administrative review.

SCOTUS's New Decision Makes Section 504 More Attractive to Claimants

But what if a student like the one in *Fry*, wanted damages in addition to or instead of an injunction? At the time, the result might have been very different because damages claims under Section 504 were subject to a very high hurdle. That's what the Supreme Court addressed most recently in *A.J.T. v. Osseo Area Schools*. The facts from which *A.J.T.* emerged are no less heart wrenching than those in *Fry*.

The student in *A.J.T.* had a form of epilepsy that impeded her attendance at school and prevented her from working during the morning hours. For many years, she received accommodation and home services during the afternoon hours so that she could continue to access an appropriate education. When her family moved, however, the new school district refused to continue providing this accommodation in the same way and the student missed nearly 2 hours of education each day over the course of three years.

Most of you reading this can see how this might translate into a damages claim. You can likely see how a good plaintiff's lawyer could quantify and demonstrate the monetary loss that this lack of instruction might have had on this student over the course of her life. As a result, the student litigated the issue and



first secured an IDEA victory in a due process hearing. Then she proceeded to court and added a claim under Section 504 for damages.

The Holding in *A.J.T.* Is Narrow

Though the trial court and the Eighth Circuit acknowledged that a denial of FAPE, and thus discrimination, under Section 504 had occurred, they held that this was not enough to authorize an award of money damages to the student. That is because the Eighth Circuit, like the Second, Fourth, Fifth, and Sixth Circuits, held that education-related claims for money damages under Section 504 required something more. They required parents and students to also show that the agency committed “bad faith” or “gross misjudgment” in failing to comply with Section 504’s anti-discrimination mandate.

This was on top of another heightened standard with which most civil rights lawyers are familiar. For most damages claims arising under Section 504, courts have historically required proof that a covered agency committed a statutory violation and deliberate indifference. On educational claims for damages under Section 504 in most federal circuits, on the other hand, the claimant must show a statutory violation and that the relevant officials exhibited even more than deliberate indifference. Specifically, they had to show that relevant officials displayed an intent to discriminate, showcased by their “bad faith” or “gross misjudgment.”

In *A.J.T.* the Supreme Court held that the heightened standard of “bad faith” or “gross misjudgment” was no longer required. Instead, the Court held that money damages under Section 504 would be available only upon satisfying the same standard that applies for all other Section 504 damages claims. The Court reached this conclusion because it found that the “bad faith” or “gross misjudgment” standard lacked a solid foundation in the text or intent of Section 504 of the Rehabilitation Act.

What SCOTUS Left Unsaid in *A.J.T.*

The Court was not exactly clear that education-related claims under Section 504 would be subject to the deliberate indifference standard going forward, though the Court assumed this in its decision. In most circuits currently, deliberate



indifference will be the prevailing standard, but the concurring decisions issued with *A.J.T.* suggest that more litigation on this point will follow.

Though the narrow decision was unanimous, it was issued with two wildly different concurrences from the liberal and conservative factions of the Court. Justices Thomas and Cavanaugh agreed that education-related claims under Section 504 should not be treated differently from other 504 damages claims, but they argued that all 504 damages claims should be subject to a heightened and intent-based standard due to restrictions under the Spending Clause. On the other hand, Justices Sotomayor and Jackson argued that as a civil rights remedial statute, Section 504 damages should be available upon a showing of a statutory violation without additional proof of deliberate indifference.

The Expected Impact of *A.J.T.*

Though *A.J.T.* is a narrow decision, it is one that will have an impact. The biggest initial result may be practical. Just like the *Fry* decision above, this one too will create more public awareness about Section 504 rights and the utility of Section 504 as a litigation tool. Because claimants now have freedom to avoid the exhaustion requirement with Section 504 claims and have a lower burden to secure damages, I expect more Section 504 litigation in court. For related reasons, I also expect more administrative and internal complaints to be asserted relating to Section 504 rights due to the increased attention to the statute and the rights it affords.

Whenever the legal standard governing claims is lowered, it also means that summary judgment may be more difficult to achieve. Since *A.J.T.* removed an element of proof for damages claims, it may mean that summary judgment will be less likely even if 504 damages claims remain subject to the deliberate indifference standard. As the dissents in the Supreme Court's decision in *A.J.T.* suggest, I expect that more litigation will occur for existing or newly filed Section 504 claims regarding the substantive standard governing the claims. Deliberate indifference remains the standard for most courts now, but this will be a standard that school lawyers will have to defend going forward.



Of course, most good defense lawyers might try to resolve these kinds of claims early before they ever get into court. This remains a possibility, since settlement of Section 504 claims often intersects with issues arising under the IDEA, but the result in *A.J.T.* implies two critical things. The first is that it remains imperative to ensure that all potential theories are addressed, or at least accounted for, in settlement agreements that resolve educational claims, especially if those claims are settled at the administrative level before claims for money damages are asserted. Unfortunately, the second implication is that parents and students may feel that their potential for damages under Section 504 is now stronger and they could be less willing to agree to universal settlements without additional compensation. In this way, the valuation and assessment of risk for Section 504 claims, even at early junctures of litigation, may be increasingly important going forward.

Conclusion: *A.J.T.* Is Narrow but Significant

In short, the Supreme Court's decision in *A.J.T.* was narrow and ostensibly affects only a small category of claims. Those claims, however, interact with other issues and may have a significant impact on the broader area of school law and special education law. In addition, the issues not yet resolved in *A.J.T.* are likely to remain alive and may be ones that school lawyers will be litigating for many years to come. The bigger impact from *A.J.T.* may be that it continues the trend the Supreme Court started in *Fry* years ago of shining a spotlight on Section 504 rights, procedures, and claims for relief. For all these reasons, it behooves school lawyers and officials to understand *A.J.T.* and to brush up on their knowledge of Section 504 because more litigation and administrative complaints under the statute may follow.

HELP WANTED!

We need and want, new members to the FDCC generally, and our Committee specifically. This includes greater diversity, more insurance professionals and in-house government lawyers. Please make an extra effort to nominate qualified candidates to join us.



We are also in need of (1) volunteers to present at upcoming conferences, and webinars; (2) writers to author articles for our publications; and (3) ideas for topics that would be of interest to our Committee members and/or the Federation. If you have any interest or ideas, please contact Nat or any of the Vice Chairs.