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An Exhausting Idea: The Fifth Circuit Examines the Idea Exhaustion Requirement in *Stewart v. Waco Independent School District*

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AN EXHAUSTING IDEA: THE FIFTH CIRCUIT EXAMINES THE IDEA EXHAUSTION REQUIREMENT IN *STEWART v. WACO INDEPENDENT SCHOOL DISTRICT*

Abstract: On March 14, 2013, in *Stewart v. Waco Independent School District*, the U.S. Court of Appeals for the Fifth Circuit held that the plaintiff was not required to administratively exhaust her Rehabilitation Act claim under the Individuals with Disabilities Education Act (IDEA). In doing so, the Fifth Circuit created a precedent that could potentially flood court dockets and that does not make use of the administrative safeguards statutorily in place. This Comment argues that, on remand, the U.S. District Court for the Western District of Texas should apply a relief-centered approach to ultimately find that the plaintiff was required to exhaust her administrative remedies under the IDEA.

INTRODUCTION

The Individuals with Disabilities Education Act (“IDEA”) currently educates approximately 6.5 million special-education students.¹ With the number of special-education court decisions on the rise, the IDEA is the fourth-most litigated federal civil statute.² Appreciating the burden that IDEA litigation imposes on courts, the statute requires IDEA students to administratively exhaust their claims prior to filing a civil action.³

In 2010, Andricka Stewart, an IDEA student, brought suit under Section 504 of the Rehabilitation Act (“Section 504”) against the Waco Independent School District without exhausting her administrative remedies, and thus put the scope of the exhaustion requirement in issue.⁴ Although the

¹ See Miriam Kurtzig Freedman, *Special Education: Its Ethical Dilemmas, Entitlement Status, and Suggested Systemic Reforms*, 79 U. CHI. L. REV. 1, 4 (2012).

² See *id.* at 17–18 (citing to a study that reports an increase in the number of reported federal education cases from 623 decisions in the 1990s to 1242 decisions between 2000–2010); see also Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems Under the IDEA: A State-by-State Survey*, 21 J DISABILITY POL’Y STUD. 3, 4–6 (2010).

³ Individuals with Disabilities Education Act, 20 U.S.C. § 1415 (2006); see also Peter J. Maher, Note, *Caution on Exhaustion: The Courts’ Misinterpretation of the IDEA’s Exhaustion Requirement for Claims Brought by Students Covered by Section 504 of the Rehabilitation Act and the ADA but Not by the IDEA*, 44 CONN. L. REV. 259, 261 (2011) (discussing the IDEA’s exhaustion requirement and arguing that this requirement applies to IDEA students but not to students only covered under Section 504 and the ADA).

⁴ *Stewart v. Waco Indep. Sch. Dist. (Stewart I)*, 711 F.3d 513, 517, 527 (5th Cir.), *opinion vacated and superseded on reh’g*, No. 11-51067, 2013 WL 2398860 (5th Cir. June 3, 2013); see

district court granted the school district's motion to dismiss without addressing the issue of administrative exhaustion, in March 2013, in *Stewart v. Waco Independent School District* ("*Stewart I*"), the U.S. Court of Appeals for the Fifth Circuit held that the plaintiff was not required to administratively exhaust her Section 504 claim under the IDEA.⁵

On March 28, 2013, the school district filed a petition for rehearing en banc, arguing that Stewart's claim should be dismissed for failing to exhaust administrative remedies.⁶ The Fifth Circuit granted the defendant's petition and, on June 3, 2013, vacated its prior opinion, with instructions to the U.S. District Court for the Western District of Texas to address whether the plaintiff's Section 504 claim was barred by any alleged failure to exhaust remedies or any defenses that may be dispositive of the entire matter.⁷

This Comment argues that courts should look to a plaintiff's prayer for relief to determine whether Section 504 claims require IDEA exhaustion.⁸ Part I examines the development of statutory protections for public school students with disabilities, the administrative exhaustion requirements under the IDEA, and the background of *Stewart I*.⁹ Part II then discusses the majority and dissenting opinions in *Stewart I* regarding the issue of administrative exhaustion.¹⁰ Finally, Part III argues that courts should adopt the Ninth Circuit's relief-centered approach because it best balances the competing policy concerns of preventing plaintiffs from avoiding IDEA exhaustion and holding schools liable for Section 504 relief not available under the IDEA.¹¹ Ultimately, this Comment urges the district court in *Stewart II* to apply the relief-centered approach to determine that Stewart was required to exhaust her administrative remedies under the IDEA.¹²

Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (codified at 29 U.S.C. § 794 (2006)).

⁵ *Stewart I*, 711 F.3d at 517, 530.

⁶ Petition for Rehearing En Banc for Appellee at 12-13, *Stewart I*, 711 F.3d 513 (No. 11-51067).

⁷ *Stewart v. Waco Indep. Sch. Dist. (Stewart II)*, No 11-51067, 2013 WL 2398860, at *1 (5th Cir. June 3, 2013).

⁸ See *infra* notes 64-84 and accompanying text.

⁹ See *infra* notes 13-48 and accompanying text.

¹⁰ See *infra* notes 49-63 and accompanying text.

¹¹ See *infra* notes 64-84 and accompanying text.

¹² See *infra* notes 64-84 and accompanying text.

I. SAFEGUARDS FOR DISABLED STUDENTS AND THE EXHAUSTION REQUIREMENT

A. Statutory Protections for Disabled Students

Congress has enacted three independent statutes to afford rights and protections to public school students with disabilities: the IDEA, Section 504, and Title II of the Americans with Disabilities Act of 1990 (“ADA”).¹³ Under the IDEA, eligible students¹⁴ are entitled to a “free appropriate public education” (“FAPE”) in the least restrictive environment (“LRE”).¹⁵ To receive a FAPE in the LRE as defined by the IDEA, a student must have an Individualized Education Plan (“IEP”) that is reasonably calculated to provide educational benefit.¹⁶ Educators and parents of a child covered by the IDEA must jointly develop an IEP for each year of the student’s education.¹⁷

The IDEA sets up a private enforcement system for the rights it creates, but is silent as to the availability of damages for those students and parents seeking recovery under the statute.¹⁸ Despite the IDEA’s silence, in 1985, in *Burlington School Committee v. Massachusetts Department of Education*, the U.S. Supreme Court held that courts may order school authorities to reimburse parents for their expenditures on a child’s private special education if reimbursement is necessary for that child to receive a FAPE.¹⁹ Although the Court did not explicitly conclude that an IDEA remedy is limited to equitable compensation, at least six U.S. Courts of Appeals—the

¹³ See Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (1990) (codified as amended at 20 U.S.C. §§ 1400–1482 (2006)); Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (codified at 29 U.S.C. § 794 (2006)); Americans with Disabilities Act, Pub. L. No. 101-336, §§ 201–205, 104 Stat. 327, 337–38 (1990) (codified at 42 U.S.C. §§ 12131–12134 (2006)); Maher, *supra* note 3, at 261.

¹⁴ 20 U.S.C. § 1401(3)(A) (defining eligible students). In order to be eligible for IDEA protections, students must have one of ten enumerated disabilities: intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities. *Id.*

¹⁵ *Id.* § 1412; *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 245 (2d Cir. 2008) (discussing whether a school failed to provide an IDEA student with the free appropriate public education that the student was entitled to by refusing to allow the student to use a service dog). Under the IDEA, the “least restrictive environment” is defined as one where, to the maximum extent appropriate, “children with disabilities . . . are educated with children who are nondisabled.” 34 C.F.R. § 300.114 (2013).

¹⁶ 20 U.S.C. § 1401(9).

¹⁷ *Id.* § 1414(d); *Polera v. Bd. of Educ.*, 288 F.3d 478, 482 (2d Cir. 2002) (explaining that an IDEA student could seek a remedy under the IDEA because the student’s educators failed to develop an IEP that specified what services they needed to provide).

¹⁸ See Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2)(C)(iii) (2006) (stating that the court “shall grant such relief as the court determines is appropriate”).

¹⁹ See *Burlington Sch. Comm. v. Mass. Dep’t of Educ.*, 471 U.S. 359, 369 (1985).

Second, Fourth, Sixth, Seventh, Eighth, and Ninth Circuits—have held that monetary damages are unavailable under the IDEA.²⁰

Similar to the IDEA, Section 504 and the ADA were enacted to afford rights and protection to students with disabilities.²¹ Both Section 504 and the ADA serve to prohibit disability discrimination.²² For students covered under Section 504 and the ADA,²³ the statutes provide a private right of action that allows “victims of prohibited discrimination, exclusion, or denial of benefits” to recover equitable *or* monetary relief.²⁴

Because the eligibility criteria under Section 504 and the ADA are much broader than under the IDEA, students covered by the IDEA are “double-covered” under Section 504 and the ADA.²⁵ In turn, Congress has expressly provided that IDEA students are not barred from bringing claims under Section 504 and the ADA.²⁶ Nevertheless, the IDEA requires that any Section 504 and ADA claims brought on behalf of students covered by the

²⁰ See, e.g., *Polera*, 288 F.3d at 484–86; *Witte v. Clark Cnty. Sch. Dist.*, 197 F.3d 1271, 1275–76 (9th Cir. 1999), *overruled on other grounds by* *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 867 (9th Cir. 2011) (en banc); *Sellers v. Sch. Bd. of Manassas, Va.*, 141 F.3d 524, 527 (4th Cir. 1998); *Charlie F. v. Bd. of Educ. of Skokie Sch. Dist.*, 98 F.3d 989, 991 (7th Cir. 1996); *Heidemann v. Rother*, 84 F.3d 1021, 1033 (8th Cir. 1996); *Crocker v. Tenn. Secondary Sch. Athletic Ass’n*, 980 F.2d 382, 386–87 (6th Cir. 1992). For example, in 1996, in *Charlie F.*, the U.S. Court of Appeals for the Seventh Circuit compared relief under the IDEA to other social welfare programs, such as medical care or housing, where compensation is not given in money damages but rather through benefits in kind. See 98 F.3d at 991. That court explained that the structure of the statute “with its elaborate provision for educational services” is inconsistent with monetary awards. See *id.*

²¹ Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (2006); Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131–12134 (2006).

²² 29 U.S.C. § 794; 42 U.S.C. § 12132; *Maher*, *supra* note 3, at 266.

²³ See 42 U.S.C. § 12102 (defining the term disability with respect to an individual to mean “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having an impairment”); see also *Maher*, *supra* note 3, at 267 (“Unlike the IDEA, Section 504 [and the] ADA [do] not include enumerated categories of impairments as a requisite for eligibility.”).

²⁴ *Cayla v. Morgan Hill Unified Sch. Dist.*, No. 5:10-CV-04312, 2012 WL 1038664, at *3 (N.D. Cal. Mar. 27, 2012); see *Miener v. Missouri*, 673 F.2d 969, 978 (8th Cir. 1982) (“Damages are awardable under section 504.”). Most federal appeals courts have established that a plaintiff can recover monetary damages under Section 504 so long as the plaintiff alleges intentional discrimination. See, e.g., *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 126 (1st Cir. 2003); *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135–36 (9th Cir. 2001).

²⁵ *Maher*, *supra* note 3, at 267, 277–78.

²⁶ See *Individuals with Disabilities Education Act*, 20 U.S.C. § 1415(l) (2006). In 1986, Congress overturned the U.S. Supreme Court’s 1984 decision in *Smith v. Robinson* that held that the Education of the Handicapped Act (“EHA”) (now the IDEA) precluded parents from bringing claims under Section 504 if they could have brought that claim under the EHA. See 468 U.S. 992, 1021 (1984) (declaring that when a remedy that “might be provided under § 504 is provided with more clarity and preclusion under the EHA, a plaintiff may not circumvent or enlarge on the remedies available under the EHA by resort to § 504”). The IDEA now provides that “[n]othing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under . . . Federal laws protecting the rights of children with disabilities.” 20 U.S.C. § 1415(l).

IDEA are subject to the IDEA's administrative exhaustion procedures if the relief sought is "also available" under the IDEA.²⁷

B. Judicial Interpretation of IDEA Exhaustion as Applied to Double-Covered Students

Under the IDEA, eligible students and their parents are guaranteed procedural safeguards with respect to the FAPE provision.²⁸ According to these procedural safeguards, a plaintiff must meet an administrative exhaustion requirement before filing a civil action.²⁹ The detailed statutory exhaustion requirement provides that, prior to bringing suit in state or district court, IDEA students and their parents must either seek relief through mediation, an impartial due process hearing, or by filing a complaint with their state or local education agency.³⁰ This exhaustion requirement gives state and local agencies "the first opportunity to correct shortcomings in their educational programs for disabled children," allowing these agencies to exercise their education expertise.³¹ Moreover, administrative exhaustion promotes judicial economy, efficiency, and accuracy by allowing administrative experts to promptly resolve grievances.³²

The IDEA provides that its exhaustion requirement applies to any Section 504 and ADA claims brought by a plaintiff, provided that the relief "is also available" under the IDEA.³³ Notably, courts have inconsistently inter-

²⁷ 20 U.S.C. § 1415(l).

²⁸ *Id.* § 1415(a); see Anne E. Johnson, Note, *Evening the Playing Field: Tailoring the Allocation of the Burden of Proof at IDEA Due Process Hearings to Balance Children's Rights and Schools' Needs*, 46 B.C. L. REV. 591, 593 (2005) (discussing the administrative appeals process, one of the IDEA's most prominent procedural safeguards).

²⁹ 20 U.S.C. §§ 1415(a), 1415(i)(2)(A). Federal courts are divided as to whether or not the exhaustion requirement is jurisdictional. *Compare Cave*, 514 F.3d at 245 (construing exhaustion as jurisdictional), with *Charlie F.*, 98 F.3d at 991 (holding that the "failure to exhaust administrative remedies does not deprive a court of jurisdiction; lack of exhaustion usually is waivable, as lack of jurisdiction is not"). Some courts interpret § 1415(l) as a provision that cannot be waived and must be plead in the complaint, thus limiting the subject matter jurisdiction of the courts. See *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 536 (4th Cir. 2002); *Urban by Urban v. Jefferson Cnty. Sch. Dist. R-1*, 89 F.3d 720, 725 (10th Cir. 1996). Conversely, the Ninth Circuit has held § 1415(l) to be a claims processing provision that defendants may offer as an affirmative defense. See *Payne*, 653 F.3d at 867.

³⁰ Individuals with Disabilities Education Act, 20 U.S.C. §§ 1415(b), 1415(e), 1415(f), 1415(i) (2006).

³¹ *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992); see *Maher*, *supra* note 3, at 295–96.

³² *Hoelt*, 967 F.2d at 1303 (explaining that IDEA exhaustion promotes judicial efficiency by giving federal courts the benefit of expert fact finding by state agencies that are devoted to the purpose of resolving IDEA issues); see *Maher*, *supra* note 3, at 295–96.

³³ See 20 U.S.C. § 1415(l). Although Section 504 provides procedural safeguards similar to the IDEA, Section 504 does not require the same detailed administrative process. See 34 C.F.R. § 104.36 (2013) (describing Section 504's procedural safeguards to include notice, an opportunity

preted whether a Section 504 or ADA claim seeks relief “that is also available” under the IDEA.³⁴ Some courts have concluded that Section 504 claims for monetary damages do not require IDEA exhaustion.³⁵ Most courts, however, have held that IDEA students seeking monetary damages under Section 504 must exhaust administrative remedies, and that students cannot evade this requirement simply through “artful pleading.”³⁶

To help guide the issue of whether a Section 504 claim for monetary relief is “also available” under the IDEA, the U.S. Courts of Appeals for the Seventh and Tenth Circuits have adopted the injury-centered approach.³⁷ Alternatively, the U.S. Court of Appeals for the Ninth Circuit has recently adopted the relief-centered approach.³⁸ As a result, it is difficult to predict when a court will be satisfied that monetary relief “is also available” under the IDEA in a compensatory way so as to require IDEA exhaustion.³⁹

for the parents to examine relevant records, an impartial hearing, and a review procedure); Maher, *supra* note 3, at 270–71.

³⁴ See Maher, *supra* note 3, at 279–80.

³⁵ See Padilla *ex rel.* Padilla v. Sch. Dist. No. 1 in City and Cnty. of Denver, Colo., 233 F.3d 1268, 1274–75 (10th Cir. 2000) (holding that IDEA exhaustion was unnecessary for an ADA claim because the plaintiff sought monetary damages unavailable under the IDEA); W.B. v. Matula, 67 F.3d 484, 494–96 (3d Cir. 1995), *abrogated on other grounds by* A.W. v. Jersey City Pub. Sch., 486 F.3d 791 (3d Cir. 2007) (holding that IDEA exhaustion was unnecessary for a 42 U.S.C. § 1983 (2006) claim because the plaintiff sought monetary damages unavailable under the IDEA).

³⁶ See, e.g., Payne, 653 F.3d at 877 (reasoning that plaintiffs cannot avoid IDEA exhaustion through artful pleading); Polera, 288 F.3d at 488 (reasoning that seeking monetary damages does not allow the plaintiff to sidestep the IDEA exhaustion requirement); Charlie F., 98 F.3d at 993 (reasoning that the parents of a double-covered student had to administratively exhaust under IDEA prior to bringing a Section 504 claim for monetary damages to court); see also *supra* note 20 and accompanying text (collecting cases holding that monetary damages are not available under the IDEA).

³⁷ See Robb v. Bethel Sch. Dist. No. 403, 308 F.3d 1047, 1051 (9th Cir. 2002), *overruled by* Payne, 653 F.3d 863; McCormick v. Waukegan Sch. Dist. No. 60, 374 F.3d 564, 568–69 (7th Cir. 2004); Cudjoe v. Indep. Sch. Dist. #12, 297 F.3d 1058, 1066 (10th Cir. 2002); see also Payne, 653 F.3d at 874–75 (discussing the Seventh and Tenth Circuit’s injury-centered approach and overturning the Ninth Circuit’s prior adoption of the injury-centered approach). The injury-centered approach examines whether the plaintiff’s alleged injury *in theory* could have been redressed to any degree by resorting to administrative remedies under the IDEA. See Payne, 653 F.3d at 874–75. This approach essentially creates a situation where administrative exhaustion is required for any case that falls within the general “field” of educating disabled students. See *id.* at 875.

³⁸ See *id.* at 875; *infra* notes 51–54 and accompanying text (discussing the Ninth Circuit’s relief-centered approach). The relief-centered approach examines a complaint’s prayer for relief when determining whether IDEA exhaustion is required. See Payne, 653 F.3d at 875. If the plaintiff is seeking an IDEA remedy, injunctive relief to alter an IEP, or a right that arises out of FAPE, then IDEA exhaustion is required. See *id.*

³⁹ See Payne, 653 F.3d at 866–68 (reversing the Ninth Circuit’s prior holding that a plaintiff’s Section 504 claim for monetary damages required IDEA exhaustion); McCormick, 374 F.3d at 569 (holding that, under the injury-centered approach, a plaintiff’s Section 504 claim requesting money damages did not require IDEA exhaustion); Cudjoe, 297 F.3d at 1063, 1068 (holding that, under the injury-centered approach, a plaintiff’s Section 504 claim requesting money damages did require IDEA exhaustion).

C. Factual and Procedural History in *Stewart I*

In *Stewart I*, the plaintiff, Andricka Stewart, alleged that she “suffer[ed] from mental retardation, speech impairment, and hearing impairment” and thus “qualifie[d] as a person with a disability under the Americans with Disabilities Act and the Rehabilitation Act.”⁴⁰ As evidenced by her IEP, Stewart is double-covered under the IDEA.⁴¹ Stewart’s complaint additionally alleged that she was involved in three incidences of sexual abuse over two years.⁴²

Stewart brought suit against the school district in the U.S. District Court for the Western District of Texas, alleging violations of Section 504 due to the school district’s “gross mismanagement” of her IEP and failure to reasonably accommodate her disabilities.⁴³ In her Section 504 claim, Stewart sought monetary damages from the school district.⁴⁴ The district court dismissed Stewart’s action in its entirety, finding that her claims attempted to hold the school district liable for the actions of a private actor.⁴⁵ Stewart appealed only her Section 504 claim to the U.S. Court of Appeals for the Fifth Circuit.⁴⁶ In *Stewart I*, the court concluded that Stewart “plausibly state[d] a claim that the [school district] committed gross misjudgment.”⁴⁷ In 2013, the Fifth Circuit, sitting en banc, vacated the *Stewart I* opinion and remanded to the district court with instructions to

⁴⁰ 711 F.3d at 517; Plaintiff’s First Amended Complaint at 4, *Stewart v. Waco Indep. Sch. Dist.*, No. 10-cv-00311 (W.D. Tex. Mar. 8, 2011).

⁴¹ See *Stewart I*, 711 F.3d at 517; Plaintiff’s First Amended Complaint, *supra* note 40, at 1; see also *supra* notes 16 and 25 and accompanying text (explaining that students with IEPs are covered by the IDEA and also covered by Section 504 and the ADA).

⁴² *Stewart I*, 711 F.3d at 517; Plaintiff’s First Amended Complaint, *supra* note 40, at 5. Prior to these three incidents of alleged abuse, Stewart was involved in an incident involving sexual contact with another male student. Plaintiff’s First Amended Complaint, *supra* note 40, at 4. The school district responded by modifying Stewart’s IEP to designate that she be separated from male students and remain under close supervision. *Id.*

⁴³ See *Stewart I*, 711 F.3d. at 517–19 (explaining that, to establish a claim for disability discrimination in the education context under Section 504, a plaintiff must allege that a school district “refused to provide reasonable accommodations” by presenting facts that create an inference of gross misjudgment); Plaintiff’s First Amended Complaint, *supra* note 40, at 7; see also Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (2006) (“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”). Stewart’s First Amended Complaint also alleged violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 (2006), a civil rights claim under 42 U.S.C. § 1983 (2006), and Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 (2006). Plaintiff’s First Amended Complaint, *supra* note 40, at 2.

⁴⁴ *Stewart I*, 711 F.3d at 529; Plaintiff’s First Amended Complaint, *supra* note 40, at 12.

⁴⁵ *Stewart I*, 711 F.3d. at 517; Order Granting Motion to Dismiss at 5, *Stewart v. Waco Indep. Sch. Dist.*, No. 10-cv-00311 (W.D. Tex. June 8, 2011); see *supra* note 5 and accompanying text (noting that the district court in *Stewart I* did not approach the issue of administrative exhaustion).

⁴⁶ *Stewart I*, 711 F.3d. at 517.

⁴⁷ *Id.* at 525. The court in *Stewart I* concluded that “gross misjudgment—a species of heightened negligence—applies to the [school] [d]istrict’s refusal to make reasonable accommodations by further modifying Stewart’s IEP.” *Id.* at 524.

determine whether the issue of administrative exhaustion is dispositive of the entire matter.⁴⁸

II. IDEA EXHAUSTION IN *STEWART I*

In *Stewart v. Waco Independent School District (Stewart I)*, the U.S. Court of Appeals for the Fifth Circuit held that Stewart was not required to administratively exhaust her Section 504 claim under the IDEA.⁴⁹ The majority emphasized that Stewart's Section 504 claim did not seek damages "as a substitute for relief under the IDEA" and therefore the Section 1415(l) exhaustion requirement did not apply.⁵⁰

The conclusion in *Stewart I* is premised on the Ninth Circuit's "relief-centered" approach.⁵¹ Under this approach, "when determining whether the IDEA requires a plaintiff to [administratively] exhaust [a claim], courts should start by looking at a complaint's prayer for relief."⁵² If the relief sought is not also available under the IDEA, Section 1415(l) does not require exhaustion.⁵³ Nevertheless, IDEA exhaustion *is* required by the relief-centered approach when a plaintiff seeks: (1) an IDEA remedy or its functional equivalent, such as compensatory damages for the cost of private education; (2) injunctive relief to

⁴⁸ See *Stewart II*, 2013 WL 2398860, at *1.

⁴⁹ See 711 F.3d 513, 530 (5th Cir. 2013), *opinion vacated and superseded on reh'g*, No. 11-51067, 2013 WL 2398860, at *1 (5th Cir. June 3, 2013). The record shows that Stewart did not exhaust her administrative remedies even though school personnel regularly notified her and her guardian of their right to seek a due process hearing and review by the district court. *Waco Indep. Sch. Dist.'s Motion Presenting Defenses at 7, Stewart v. Waco Indep. Sch. Dist.*, No. 10-cv-00311 (W.D. Tex. Jan. 13, 2014).

⁵⁰ See *Stewart I*, 711 F.3d at 530; see also *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 871 (9th Cir. 2011) (en banc) ("Non-IDEA claims that do not seek relief available under the IDEA are not subject to the exhaustion requirement, even if they allege injuries that could conceivably have been redressed by the IDEA."). Not dispositive of this opinion, but mentioned by the majority, was whether exhaustion is a jurisdictional prerequisite. See *Stewart I*, 711 F.3d at 528. The dissent raised the issue of administrative exhaustion *sua sponte*, despite the fact that neither party raised the issue on appeal. See *id.* at 527; *id.* at 531 (Higginbotham, J., dissenting). The school district explicitly stated that Stewart was ineligible to recover under the IDEA. See *id.* at 527 (majority opinion). This statement would appear to nullify any 20 U.S.C. § 1415(l) exhaustion requirement. See *id.*; see also *Individuals with Disabilities Education Act*, 20 U.S.C. § 1415(l) (2006). The majority reasoned that the dissent's only reason for raising the issue of IDEA exhaustion "would have to be an implicit conclusion—unstated and unexamined—that the IDEA considers the issue jurisdictional." *Stewart I*, 711 F.3d at 527–28; see *supra* note 29 (discussing the circuit split regarding whether IDEA exhaustion is jurisdictional).

⁵¹ See *Stewart I*, 711 F.3d at 529 & n.25 (explaining that the Fifth Circuit relied on, but did not fully adopt, the Ninth Circuit's analysis); *Payne*, 653 F.3d at 875 (applying the Ninth Circuit approach).

⁵² *Payne*, 653 F.3d at 875. The Ninth Circuit reasoned that the relief-centered approach more aptly reflects the meaning of IDEA exhaustion because it examines whether the plaintiff actually sought relief under the IDEA as opposed to whether the plaintiff *could have* sought relief under the IDEA. See *id.*

⁵³ *Id.*

alter an IEP; and (3) to enforce the rights that arise out of FAPE, such as a Section 504 claim that is premised on a denial of FAPE.⁵⁴ Following this “relief-centered” approach, the *Stewart I* court reasoned that it could not conclude on the record that Stewart sought “compensatory or prospective forms of educational relief” also available under the IDEA.⁵⁵ Consequently, the court concluded that because Stewart sought monetary relief, rather than equitable compensation, the exhaustion requirement under Section 1415(l) did not apply to Stewart’s Section 504 claim.⁵⁶

To reach the opposite conclusion, the dissent in *Stewart I* focused on the detailed remedial scheme in the IDEA, including the requirement that plaintiffs must exhaust all administrative remedies prior to bringing court proceedings.⁵⁷ Because Stewart’s allegation that the school district mismanaged her IEP “is a creature, not of § 504, but of the IDEA,” dissenting Judge Patrick Higginbotham reasoned that Stewart’s Section 504 claim fell within the IDEA’s exhaustion requirements.⁵⁸ The dissent emphasized that Stewart attempted to avoid the administrative exhaustion requirement under the IDEA by seeking monetary damages, a remedy not available under the IDEA.⁵⁹ Moreover, Judge Higginbotham argued that the majority’s holding allows disabled students to avoid exhaustion by simply waiting to bring damages until administrative remedies are no longer useful.⁶⁰ According to the dissent, the majority’s holding creates a slippery slope problem with the potential to “gut the exhaustion requirement of all meaning.”⁶¹

Because the Fifth Circuit later vacated the *Stewart I* opinion, the U.S. District Court for the Western District of Texas has the significant task of

⁵⁴ *Id.* The Ninth Circuit adopted the relief-centered approach as proposed by the Department of Justice (DOJ) in an amicus curiae brief. *See id.*; Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellants at 10, *Payne*, 653 F.3d 863 (No. 07-35115). In the amicus brief, the DOJ stressed that IDEA exhaustion serves an important purpose in these three enumerated situations. *See* Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellants, *supra*, at 22.

⁵⁵ *Stewart I*, 711 F.3d at 529. As pled, the plaintiff sought monetary damages for past physical pain, medical expenses, physical impairment, and past and future mental health expenses. *Id.*

⁵⁶ *Id.* at 530; *see* Individuals with Disabilities Education Act, 20 U.S.C. § 1415(l) (2006); *supra* note 20 and accompanying text (collecting cases holding that monetary damages are unavailable under the IDEA).

⁵⁷ *Stewart I*, 711 F.3d at 531–32 (Higginbotham, J., dissenting); *see* 20 U.S.C. §§ 1415(i)(2)(A), 1415(l); *see also* *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 487 (2d Cir. 2002) (“The IDEA’s exhaustion requirement was intended to channel disputes . . . into an administrative process that could apply administrators’ expertise . . . [to] promptly resolve grievances.”).

⁵⁸ *Stewart I*, 711 F.3d at 531 (Higginbotham, J., dissenting); *see supra* note 16 and accompanying text (explaining that the IDEA requires every covered student to have an IEP).

⁵⁹ *Stewart I*, 711 F.3d at 531 (Higginbotham, J., dissenting). Instead, according to the dissent, Stewart and her parents or guardians should have contacted the school district about the alleged instances of sexual abuse. *Id.* at 532.

⁶⁰ *See id.* at 534.

⁶¹ *Id.*

reexamining the applicability of IDEA exhaustion in this case.⁶² In determining whether administrative exhaustion will be dispositive of the entire matter, the court will likely focus on the question of whether the relief sought by Stewart is also available under the IDEA.⁶³

III. THE DISTRICT COURT SHOULD APPLY THE RELIEF-CENTERED APPROACH IN DETERMINING THE APPLICABILITY OF IDEA EXHAUSTION

Although the Fifth Circuit was correct to rely on the Ninth Circuit's relief-centered approach in *Stewart v. Waco Independent School District* ("*Stewart I*"), the court relied on flawed reasoning, and thus reached the incorrect result regarding IDEA exhaustion.⁶⁴ This Part begins by arguing that courts should adopt the Ninth Circuit's relief-centered approach because, compared to the injury-centered approach, it best balances competing policy concerns.⁶⁵ This Part then argues that, on remand, the U.S. District Court for the Western District of Texas ought to apply the relief-centered approach to find that Stewart was required to administratively exhaust her Section 504 claim under the IDEA.⁶⁶

There are critical and competing policy concerns that underlie the issue of IDEA exhaustion for double-covered students.⁶⁷ First, requiring IDEA students to exhaust their Section 504 claims could result in closing "both the doors of the hearing room and courtroom" for plaintiffs.⁶⁸ This would put IDEA students at a disadvantage to other students who are able to bring their Section 504 claims straight to court without exhaustion.⁶⁹ Moreover, requiring exhaustion would preclude a school district from liability for violating a plaintiff's constitutional and statutory rights.⁷⁰ On the other hand, allowing

⁶² See *Stewart II*, No 11-51067, 2013 WL 2398860, at *1 (5th Cir. June 3, 2013).

⁶³ See *Stewart I*, 711 F.3d at 528–30 (explaining that a court's examination of the IDEA exhaustion requires an inquiry into whether the relief sought is also available under the IDEA); see also *Stewart II*, 2013 WL 2398860, at *1 (instructing the district court to focus on the issue of IDEA exhaustion).

⁶⁴ See *Stewart I*, 711 F.3d 513, 529, 531 (5th Cir.), *opinion vacated and superseded on reh'g*, No. 11-51067, 2013 WL 2398860, at *1 (5th Cir. June 3, 2013); *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 875 (9th Cir. 2011) (en banc).

⁶⁵ See *infra* notes 67–80 and accompanying text.

⁶⁶ See *infra* notes 81–84 and accompanying text.

⁶⁷ See *Polera v. Bd. of Educ.*, 288 F.3d 478, 490 (2d Cir. 2002); *Maher*, *supra* note 3, at 284.

⁶⁸ See *Maher*, *supra* note 3, at 283. If the court cannot hear an IDEA student's Section 504 claim because that student has failed to exhaust, then that student will be barred from recovery. *Id.* Similarly, if an IDEA student brings a Section 504 claim to an IDEA administrative hearing, that hearing officer may lack jurisdiction to hear Section 504 claims, again barring recovery. *Id.*

⁶⁹ See Mark C. Weber, *Disability Harassment in the Public Schools*, 43 WM. & MARY L. REV. 1079, 1112 (2002). Because the emphasis of the IDEA is on educational services, the IDEA is often deficient as a remedial mechanism for Section 504 harassment claims. See *id.*

⁷⁰ See *Payne*, 653 F.3d at 877 ("If the school's conduct constituted a violation of laws other than the IDEA, a plaintiff is entitled to hold the school responsible under those other laws.").

students to sit on their claims in order to avoid administrative exhaustion would burden the courts and increase the costs imposed on school districts.⁷¹ As raised by the school district in *Stewart I*, a finding that exhaustion is not required would “permit a [double-covered] student . . . to delay seeking any remedy under IDEA . . . only to, years later, bring a suit for failure to appropriately modify the IEP.”⁷²

Given these competing policy concerns, courts should adopt the Ninth Circuit’s relief-centered approach because it best balances the interests of plaintiffs and school districts.⁷³ To achieve this balance, the relief-centered approach focuses on a plaintiff’s prayer for relief and considers whether the relief sought is also available under the IDEA.⁷⁴ This approach ensures that school officials are not temporarily shielded “from all liability for conduct that violates constitutional and statutory rights that exist *independent* of the IDEA and entitle[] a plaintiff to relief *different* from what is available under the IDEA.”⁷⁵ Moreover, the relief-centered approach has important limitations to ensure that plaintiffs cannot evade the exhaustion requirement by artfully limiting their relief to a request for damages.⁷⁶

The relief-centered approach is superior to the injury-centered approach, which requires IDEA exhaustion for any case that falls within the general “field” of educating disabled students.⁷⁷ Under the injury-centered approach, double-covered students have little protection because this approach broadly requires IDEA exhaustion for non-IDEA claims.⁷⁸ Deter-

⁷¹ See *Polera* 288 F.3d at 490; see also Freedman, *supra* note 1, at 5 (explaining that the IDEA imposes large costs—\$110 billion per year—and these costs will rise with increased litigation).

⁷² Petition for Rehearing En Banc for Appellee at 12, *supra* note 6, at 12; see *Polera*, 288 F.3d at 490.

⁷³ See *Stewart I*, 711 F.3d at 529; *Payne*, 653 F.3d at 874; *supra* notes 52–54 and accompanying text (discussing the relief-centered approach).

⁷⁴ See *Stewart I*, 711 F.3d at 529; see also *supra* note 52 and accompanying text (explaining that the relief-centered approach examines whether the plaintiff actually sought relief under the IDEA, as opposed to whether the plaintiff could have sought relief under the IDEA).

⁷⁵ *Payne*, 653 F.3d at 877–78. In *Payne*, the court reasoned that “nothing in the IDEA protects a school from non-IDEA liability simply because [the school] was making a good-faith attempt to educate its disabled students.” *Id.*

⁷⁶ See *id.* at 875. Under the relief-centered approach, plaintiffs must administratively exhaust their non-IDEA claims when the plaintiffs are seeking (1) an IDEA remedy, or its functional equivalent; (2) injunctive relief to alter an IEP; or (3) rights that arise out of FAPE. See *id.*

⁷⁷ See *id.*; *supra* note 37 and accompanying text (describing the injury-centered approach); cf. *McCormick v. Waukegan Sch. Dist. No. 60*, 374 F.3d 564, 568–69 (7th Cir. 2004) (applying the injury-centered approach and reasoning that courts should require IDEA exhaustion if a plaintiff alleged injuries that *could be redressed to some degree* by the IDEA’s administrative procedures and remedies) (emphasis added).

⁷⁸ See *Payne*, 653 F.3d at 876–877; cf. *Cudjoe v. Indep. Sch. Dist. #12*, 297 F.3d 1058, 1063 (10th Cir. 2002) (applying the injury-centered approach and holding that the plaintiff was preclud-

mining whether exhaustion is required necessarily requires courts to engage in an inappropriate level of in-depth speculation to infer that any double-covered student's request for monetary damages will be directed towards forms of relief that would be available under the IDEA.⁷⁹ Courts should not engage in such sweeping assumptions that any disabled student seeking monetary damages requires this relief as reimbursement for expenditures on private special education.⁸⁰

On remand in *Stewart II*, the district court should apply the relief-centered approach to find that Stewart needed to exhaust her administrative remedies.⁸¹ Although Stewart's monetary claim is not available under the IDEA, the relief-centered approach requires IDEA exhaustion whenever a plaintiff seeks to enforce a right that arises out of FAPE.⁸² Stewart's Section 504 claim seeks to enforce a right that arises out of FAPE because it is based on the contention that the school district acted with gross misjudgment in the administration of Stewart's IEP.⁸³ Accordingly, even under the relief-centered approach, Stewart was required to administratively exhaust her Section 504 claim under the IDEA.⁸⁴

ed from bringing a disability discrimination claim in federal court because the plaintiff did not exhaust administrative remedies under the IDEA).

⁷⁹ See *Payne*, 653 F.3d at 876–877; cf. *Cudjoe*, 297 F.3d at 1063, 1068 (inferring that the plaintiff's discrimination claim and request for monetary damages required IDEA exhaustion because the discrimination claim was based on injuries arising in the educational context). The court in *Payne* noted that such speculation is even more egregious when conducted at the motion to dismiss or summary judgment stage of pleadings. See 653 F.3d at 876–877. The district court ought to bear in mind this caveat when determining which approach to apply on remand. See *id.*

⁸⁰ See *Payne*, 653 F.3d at 876–877; see also *supra* note 19 (discussing reimbursement damages available under the IDEA).

⁸¹ See *Stewart I*, 711 F.3d at 517; *Payne* 653 F.3d at 875. Though *Stewart I* applied the relief-centered approach, it relied on flawed reasoning. See *Stewart I*, 711 F.3d at 530; *Payne* 653 F.3d at 875. The court failed to consider that the relief-centered approach requires IDEA exhaustion when a plaintiff's Section 504 claim is premised on a denial of FAPE. See *Stewart I*, 711 F.3d at 530; *Payne* 653 F.3d at 875. Furthermore, on remand, the school district has argued that the court should apply the injury-centered rule that exhaustion applies “when a plaintiff seeks relief for injuries that could have been addressed ‘to any degree’ under the IDEA.” Waco Indep. Sch. Dist. Motion Presenting Defenses, *supra* note 49, at 8. Though this reasoning would achieve the correct conclusion that Stewart was required to exhaust her administrative remedies, this would require the district court to speculate that Stewart's prayer for monetary damages was intended to be directed towards compensatory forms of relief available under the IDEA. See *Payne*, 653 F.3d at 876–77; *supra* note 79 and accompanying text (arguing that this level of speculation is inappropriate). Instead of basing its reasoning on inferences, the district court should follow the *Stewart I* court's directive to utilize the relief-centered approach. See *Stewart I*, 711 F.3d at 531.

⁸² See *Payne*, 653 F.3d at 875; *supra* note 54 and accompanying text (discussing which scenarios require IDEA exhaustion under the relief-centered approach).

⁸³ See *Stewart I*, 711 F.3d at 517; *Payne*, 653 F.3d at 875; *supra* note 16 and accompanying text (explaining that to receive a FAPE as defined by the IDEA, a student's IEP must be reasonably calculated to provide educational benefit).

⁸⁴ See *Stewart I*, 711 F.3d at 517; *Payne*, 653 F.3d at 875.

CONCLUSION

The court's decision in *Stewart v. Waco Independent School District* had serious implications for school districts: a student could have held a school liable for gross mismanagement of her IEP without exhausting her administrative remedies under the IDEA. Such a lenient interpretation of the IDEA's exhaustion requirement could expose school districts to an increased amount of costly litigation. Because Stewart's Section 504 claim was couched within the IDEA, on remand, the U.S. District Court for the Western District of Texas ought to find that IDEA exhaustion is dispositive in this case. The district court should apply the relief-centered approach to determine the necessity of IDEA exhaustion, and should find that Stewart's Section 504 claim required IDEA exhaustion because it sought to enforce a right that arose out of the IDEA's "free appropriate public education." In doing so, the district court will avoid a decision that would allow double-covered students to engage in artful pleading to avoid IDEA exhaustion in order to receive monetary damages.

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