

Why She Needs the Dog, and Why it Matters

“A U.S. Supreme Court Case Regarding IDEA Administrative Exhaustion Requirements”

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The Individuals with Disabilities Education Act (IDEA) is the cornerstone of educational law in the United States as it applies to educating students with disabilities. Although it is in fact a funding statute, its substantive provisions have been adopted by each state as a condition of receiving certain federal funds. One of the primary purposes of IDEA is to, “(E)nsure that all children with disabilities have to them a free and appropriate public education that emphasizes special education, employment, and independent living.”<sup>1</sup>

A major component of IDEA is that parents have the ability to make complaints regarding non-compliance with IDEA and those complaints are adjudicated through an administrative process before parents can file a complaint in court, with the record of the administrative appeal being submitted to the court. The logic for this is that, “Federal Courts - generalists with no expertise in the educational needs of the handicapped students –are given the benefit of expert fact-finding by a state agency devoted to this very purpose”<sup>2</sup>

From my experience as a ten year elementary school teacher and a practicing education law attorney, requiring administrative exhaustion is effective component of IDEA. It resolves most disputes without requiring court action, but still allows for court action if the administrative procedures are not satisfactory to either party.

The Americans with Disabilities Act (ADA) and The Rehabilitation Act are also laws that provide protection to people with disabilities. Neither one of these statutes requires people to go through the extensive administrative procedures that are required under IDEA before filing a lawsuit.

With this as a background the U.S. Supreme Court has accepted Cert. in *Fry, et al. v. Napoleon Cmty. Sch., et al.*, 788 F3d. 622. This is a case brought by the Frys’ under a dispute with Napoleon Community Schools, in Michigan.

E.F. is the daughter of Stacy and Brent Fry. She was born with spastic quadriplegic Cerebral Palsy. In 2008 she was prescribed with a service dog, and over the next year she and her family went through extensive training with her service dog Wonder, a hybrid Goldendoodle.

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<sup>1</sup> 20 U.S.C. 1400(d)(1)(A).

<sup>2</sup> *Crocker v. Tenn Secondary Sch. Athletic Ass’n*, 873 F.2d 933,935 (6<sup>th</sup> Cir. 1989) (analyzing substantially similar provisions of the IDEA’s predecessor statute).

Wonder assisted E.F. with several physical activities including, assisting her with directional control of her walker, with ambulation, and with stabilizing herself in and out of the walker, along with several other physical activities.

The School that E.F. attended, Ezra Eby Elementary School, provided her with a 1 to 1 aide during the school day, and it was the school's position that E.F.'s Individualized Education Program (IEP) could be effectively implemented with the 1 to 1 aide. The school had concerns that the service dog was objectionable because he may cause allergic reactions in staff members or students, or could become a distraction. For this reason the school refused to allow the service dog in the school building (they had a short trial period where the dog was allowed in the school, but ultimately the school decided against it). Of note, the school did have a policy of allowing guide dogs. So that, if E.F. were blind, her guide dog would have been permitted to be with her at school.

The Frys then pulled E.F. from the school district and home schooled her, eventually finding another district that allowed Wonder to accompany E.F. to school. They brought a complaint against the district in 2012 with the Office of Civil Rights Under the ADA and the Rehabilitation Act, and the Office of Civil Rights found that the school's refusal to permit Wonder to attend school with E.F. was a violation of the ADA. In December of 2012 the Frys filed suit seeking damages for the period of 2009-2012 when the service dog was not allowed to attend school with E.F. The Frys sought relief under the ADA and the Rehabilitation Act, but made no claims under IDEA. The District court dismissed the case on Defendant's Motion to Dismiss based on its belief that the administrative procedures under IDEA needed to be exhausted before the Frys brought suit on these issues. This is despite the fact that the Frys made no claims under IDEA.

The issue before the courts then is not whether the service dog should be allowed to accompany E.F. to school, but rather, whether under the circumstances presented, should the Frys be required to exhaust the administrative procedures under IDEA, prior to filing suit?

The Sixth Circuit Court of Appeals upheld the District Court's decision finding, "...because the specific injuries the Frys allege are essentially educational, they are exactly the sort of injuries the IDEA aims to prevent, and therefore the IDEA's exhaustion requirement applies to the Frys' claims."<sup>3</sup>

The setup here doesn't allow for a full analysis but it is my belief that the Dissent in Fry makes a more persuasive argument. IDEA is a statute that by its terms guarantees students a free and appropriate education. Educational decisions are best left to experts in the field, which is why the administrative procedures under IDEA are effective. However, the ADA, as the Dissent points out, guards E.F.'s civil rights by making sure that she has equal access to publicly funded facilities and publicly funded programs. I believe that this case is more analogous to a student that needs a hearing aid or a wheel chair, than it is to a case where the student needs specially designed instruction. In other words there is no component of this case that relies on the specialized knowledge of the administrative procedures under IDEA.

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<sup>3</sup> Fry, at 623

As a more practical issue to those practicing in education law, this case serves as a reminder to consider the ADA and the Rehabilitation Act when advocating for clients. From my experience, schools tend to focus on IDEA, because it is the law that is most regularly impacted in school law cases, but in certain situations the ADA and the Rehabilitation Act provide more stringent requirements on schools than does IDEA.