A Case Review Concerning the Effectiveness of Provisions of the Individuals with Disabilities Education Act

by Cameron Ryan

On behalf of their daughter, the E.F. Fry family sued Napoleon Community school for damages citing emotional humiliation, which was not covered under the Individuals with Disabilities Education Act (IDEA), but instead was covered under the Americans with Disabilities Act (ADA).[1] However, the ruling of the U.S. Court of Appeals for the sixth circuit found their educational demands to be protected under the IDEA, and thus, they needed to go through the administrative system of exhaustion which is required under the IDEA. The Supreme Court heard oral arguments and questioned why the parties were even before them, noting that the statutes were clear and had to be followed, but that perhaps the larger question was whether the parties were seeking assistance for their daughter who suffered from cerebral palsy since birth, or were they seeking damages only? If they were suing under the ADA for damages, were they perhaps seeking to improve a system designed to improve quality of life for those with disabilities, when their daughter had only experienced humiliation, or were they seeking a better program for their daughter in the future under the IDEA. In both cases, free education and the quality of care might be the final objective.

For more than half of the past century, the U.S. federal government has greatly expanded civil rights for everyone, especially protection for the disabled, either physically, medically, or mentally. Yet with these new laws, it can be confusing for people to identify which law they should use when pursuing legal actions. Under the IDEA, they could choose to secure education services, or if they sued under the ADA, they could sue for damages. The case of *Fry v. Napoleon Community Schools*[2] represents a challenge for the normal issues related to selecting the legal theory upon which a claim is based because in this case, the parties are seeking damages on behalf of a young girl who no longer attends the school where she suffered emotional damages and the

[1] 580 U.S. ____ (2017), (on appeal from *Fry v. Napoleon Community Schools*, 788 F.3d 622 (6th Cir. June 12, 2015).
[2] Id.

question is whether a claimant must exhaust all administrative remedies before seeking damages when the issue is not whether free education opportunities were made available.

Yet the School system defendant demanded that the claimant exhaust the IDEA hearings as required by the statute in order to establish their claim and in order to allow the defendant School system to defend their actions by proving they supplied all she needed by providing a human being for her aid. The claimant alleged emotional abuse because the school system, refused to allow the child to have her service dog with her. The service dog assisted the child to open doors, turn on lights, pick up dropped items, remove her coat, and help her balance when she moved from her walker onto a chair or the toilet.[3] The claimant never alleged a denial of access to educational services, but rather alleged emotional damages due to the denial of access to her service dog.

The Focus of the Frys'

Throughout the trial, the defendant referenced the need to go through the exhaustion hearings under the IDEA even though the issue at trial concerns damages under the ADA. The question is whether IDEA proceedings must be completed first before any other issue can be addressed.[4] The claimant, E.F. Fry was diagnosed with cerebral palsy at an early age[5] which creates mobility issues for her. She is suing the Napoleon Community School for emotional damages based upon allegations of being watched by the school's lawyers to make sure she used her dog to assist in her for things like going to the bathroom. Furthermore, when the claimant's parents sought permission for the service dog to join the claimant in kindergarten, the officials at Ezra Eby Elementary School refused the request claiming they provided human

[3] Id.
[4] *Fry v. Napoleon Community Schools*, 73, 73 (2016), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-497_4g15.pdf (last visited Jan 19, 2017).
[5] *Fry v. Napoleon Community Schools*, Oyez, https://www.oyez.org/cases/2016/15-497 (last visited Jan 19, 2017).

assistance and therefore, the claimant did not need a dog. [6]

The claimant alleged that the school put her in embarrassing situations and denied her the comfort of her service dog. It is not hard to imagine such damages occurred. But under the IDEA in this specific circumstance, the statute would not apply since they were only seeking emotional damages for putting her in such a humiliating position.[7] This leads to the ADA, which does have these protections and allows for tort claims. But does that mean the IDEA is obsolete if its hearing process isn't exhausted?

In the Amicus Curiae Brief [8]of the Honorable Lowell Weicker, Jr., petitioning for Fry, Weicker cited *Smith v. Robinson*[9] where the court found that the IDEA doesn't preempt lawsuits under the Handicapped Children's Protection Act (HCPA), which was passed in order to fix problems with its predecessor, the Education of the Handicapped Act (EHA) by allowing families to make the choices that are best for their children and, where necessary, to file suit to redress violations of their rights pursuant to disability statutes and other laws.[10] The HCPA is intended to allow broader rights for families to redress wrongs committed against their disabled children, meaning it takes precedence over identical claims brought under other laws in order to

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[6] *Fry v. Napoleon Community Schools* , No. 15–497. Argued October 31, 2016—Decided February 22, 2017, Pg. 10, https://www.supremecourt.gov/opinions/16pdf/15-497_p8k0.pdf (last visited March 2, 2017).

[7] Public Law 108–446, 108th Congress An Act, E:\Publaw\Publ446.108, parentcenterhub.org (2004), http://www.parentcenterhub.org/wp-content/uploads/repo_items/PL108-446.pdf (last visited Jan 19, 2017).

[8] *Fry v. Napoleon Community Schools*, Brief Of Amicus Curiae Hon. Lowell P.Weicker, Jr. In Support Of Petitioners, NO. 15-497 (S. Ct. 2016), http://www.scotusblog.com/wp-content/uploads/2016/09/15-497-amicus-petitioner-weicker.pdf. (last visited March 2, 2017).

[9] 468 U.S. 992 (1984).

[10] *Fry v. Napoleon Community Schools*, Brief Of Amicus Curiae Hon. Lowell P. Weicker, Jr. In Support Of Petitioners, NO. 15-497 (S. Ct. 2016), http://www.scotusblog.com/wp-content/uploads/2016/09/15-497-amicus-petitioner-weicker.pdf. (last visited March 2, 2017).

obtain relief. The HCPA was passed by Congress in order to give parents the right to give input for their child's Individualized Education Program (IEP), and if the needs are not met, then the parents can file a lawsuit.[11]

Yet, the Sixth Judicial Circuit Court of Appeals asserted that petitioners under the IDEA, must go through the administrative hearings process, or it would weaken the IDEA, and circumvent Congress' intention with the HCPA. It is generally accepted that with the passage of these laws, Congress intended to give children with disabilities, a free, and appropriate public education. Yet, prior to the Fry case, a significant gray area existed where the procedural requirements were uncertain.

The Focus of Congress

Before the HCPA was the EHA which, as described by Ernest L. Boyer in his essay, "Public Law 94-142: A Promising Start?", that it is a set of "regulations" that require schools to give an Individual education plan, or IEP as it is commonly called, and that at the public's expense, schools would provide an education to disabled students with an appropriate use of federal funds.[12] However, later in the article, Boyer acknowledged that this could be changed in the future. [13] By the time of *Smith v. Robinson*, as the Hon. Weiker Jr. wrote, "The EHA would … permit plaintiffs to bring substantively identical claims under other laws to get to the benefit of additional remedies such as damages and attorney's fees."[14]

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[11] *Handicapped Children's Protection Act Becomes Law*, The Leadership Conference on Civil and Human Rights (2017), http://www.civilrights.org/monitor/august1986/art5p1.html?referrer=https://www.google.com/ (last visited Jan 19, 2017).

[12] Ernest Boyer, *Public Law 94-142: A Promising Start?*, (1979), http://www.ascd.org/ASCD/pdf/journals/ed_lead/el_197902_boyer.pdf (last visited Jan 19, 2017).

[13] Id.

[14] *Fry v. Napoleon Community Schools*, Brief Of Amicus Curiae Hon. Lowell P. Weicker, Jr. In Support Of Petitioners, NO. 15-497 (S. Ct. 2016), http://www.scotusblog.com/wp-content/uploads/2016/09/15-497-amicus-petitioner-weicker.pdf ,(last visited Jan 19, 2017).

With the HCPA, parents now have a direct say in the matters of their children's IEP.[15] The Fry's tried going through the administrative process, though not the IDEA. to implement their request that the claimant's service dog be allowed to assist her at school, and when the school refused, they removed their child and began home schooling her. It was the final act of refusal that prompted the law suit for emotional distress damages.

This case allows the circumvention of provisions of the IDEA when the needs of the student are not dealt with appropriate under the IDEA protocols. However, the IDEA only protects students looking for physical relief through an administrative process of hearings. This is included along with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act[16] which protects children from being denied an evaluation, or extremely prolonging it across the reasonable timeline to evaluate the student for disabilities.[17] Section 504 also includes a provision that precludes schools from paying for private schooling for a former student with a disability under FAPE.[18] But it was the egregious actions of the school when they made the claimant go to the bathroom with the stall door open and four adults watching that contributed to the emotional distress.[19] With the Fry case, the Supreme Court was required to balance competing needs, either rendering the IDEA unenforceable by allowing lawsuits for parents that could damage the economic stability of schools, or meet the needs of the child as intended by the IDEA.

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[15] *Handicapped Children's Protection Act Becomes Law*, The Leadership Conference on Civil and Human Rights (2017), http://www.civilrights.org/monitor/august1986/art5p1.html?referrer=https://www.google.com/ (last visited Jan 19, 2017).

[16] 29 U.S.C. § 794 (Section 504).

[17] *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*, www2.ed.gov (2016), https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf (last visited Jan 19, 2017).

[18] Id.

[19] *Fry v. Napoleon Community Schools*, 73, 73 (2016), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-497_4g15.pdf (last visited Jan 19, 2017).

The Supreme Court's Attentions

Justice Kagan questioned counsel about the nature of his argument having two sides: one which constitutes seeking only emotional damages, while not making a claim they were denied a fair and appropriate education.[20] Justice Kagan opined, "[T]his case is the intersection of the two… either one of those things would mean that you don't have to exhaust."[21] Rather, the court found that it was not a requirement that there be a denial of a FAPE to a disabled child in order to seek damages. Of course, suing the school would hurt its financial resources and therefore its processes, but in seeking a change of the school's IEP for their daughter, the school inflicted unneeded and disquieting embarrassment upon a disabled child. The pathos is powerful, and the court responded positively to the claimant's argument.[22]

Justice Breyer suggested that, "Under ordinary exhaustion principles, you have to exhaust and exhaustion would be futile."[23] The court suggests that if an IED change isn't what the claimant wants, and if the defendant and claimant agree that a FAPE was provided, then they can file the lawsuit for damages alone.[24] It seemed that the court embraced the public policy behind the passage of the IDEA and looked toward the future application of their interpretation in order to accomplish that identified public policy purpose. [25]

The Very Narrow Road to Damages

The IDEA has done a great deal of good for students with disabilities. The National Center for education statistics show that 6,464 human beings, ages three to 21, are served by the IDEA. So, something within the system works and is used by the American public, and therefore needs to be protected as a

[20] Id.
[21] *Fry v. Napoleon Community Schools*, 73, 73 (2016), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-497_4g15.pdf (last visited Jan 19, 2017).
[22] Id.
[23] Id.
[24] Id.
[25] Id.

useful law. There needs to be an amendment to the ADA to allow for damages as a separate claim. Asking for something like a change in the plaintiff's IEP, could still require exhausting the IDEA hearings requirements. If these provisions are identified as an amendment to the statute it would offer clarification and establish a firm legal pathway to sue for things like intentional infliction of emotional distress. By doing this, it would allow for cases almost identical to the E.F. Fry case to more easily be resolved. The concept of future damages is still questionable because if the FAPE can be adapted to the needs of the child, the situation should have an informal resolution. However, if the plaintiff is continuously hurt throughout their academic career, they would need the IDEA's protections. Now with this proposal, any debate in Congress concerning amendments to IDEA could also trigger debate about similar issues the HCPA and ADA, which could require consideration of a new kind of relief.