

Stacy Fry, et vir, as next friends of minor E.F. v. Napoleon Community Schools

2017 WL 685533

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Background

Children with special needs have their rights protected by several federal statutes: the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 *et seq.*, and § 504 of the Rehabilitation Act (§ 504), 29 U.S.C. § 794. The U.S. Supreme Court addressed the interplay of these laws in the case brought by Stacey and Brent Fry on behalf of their daughter, E.F.

E.F. was a child with profound physical limitations due to cerebral palsy. On recommendation of E.F.'s pediatrician, the Frys bought a service dog to help E.F. with various activities of daily living, balancing, and moving from standing to sitting. The Frys requested permission for the service dog to join E.F. when she began kindergarten. Under E.F.'s existing individualized education program (IEP) at that time, a human aide provided one-on-one support throughout the school day, so the school district refused the request, reasoning that the human aide took the place of the dog. The Frys thereafter filed a complaint with the Office of Civil Rights, which ultimately decided that denying E.F. use of the service dog violated Title II and § 504. Although the school subsequently agreed to allow the service dog, the Frys removed E.F. from the district, then filed suit against the local and regional school districts and the principal. The Frys' complaint alleged violation of Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act by denying E.F. equal access to the districts' programs, refusing to reasonably accommodate E.F.'s use of a service dog, and otherwise discriminated against E.F. based on her disability. The District Court granted the school districts' Motion to Dismiss the suit, finding that the Frys were required under the IDEA to exhaust administrative remedies, and the Sixth Circuit Court of Appeals affirmed that decision.

Holding

Writing for the Court, Justice Kagan began the opinion with a discussion of the relief available for children with disabilities, such as the IDEA, the ADA, and § 504 of the Rehabilitation Act. The Court noted that an IDEA suit seeks relief for the denial of a free adequate public education (FAPE). If the gravamen of the complaint is the denial of a FAPE, then the plaintiff must exhaust the administrative remedies required in the IDEA, including a hearing in front of an IDEA officer. The Court held that the IDEA's exhaustion of administrative remedies is not required in a lawsuit that does not seek relief from the denial of a FAPE. The Court explained that indicators

as to the substance of the complaint can be found by asking two hypothetical questions about the nature of the plaintiff's grievance, and by reviewing the history of the proceedings before suit was filed, including previous pursuit of the IDEA's administrative remedies. The two (2) hypothetical questions set forth by the Court are: (1) could essentially the same claim have been brought at a public facility that was not a school; and (2) could an adult press essentially the same claim against the school? The Court held that is the answer to the two questions is "yes," the plaintiff need not exhaust the IDEA administrative remedies.

In this case, the Court examined the allegations of the Frys' complaint and the record, noting that the Frys maintained throughout that the school districts infringed E.F.'s right to equal access to services, and did not challenge whether E.F.'s educational needs were met. The Court determined that the Frys' complaint alleged only disability-based discrimination, without any suggestion as to the adequacy of E.F.'s education, such as a deficient IEP that is tantamount to the denial of a FAPE. The Court unanimously vacated and remanded the case to the lower court to establish whether the Frys invoked the IDEA's dispute resolution process before bringing the suit, and to decide whether the essence of the complaint is the denial of a FAPE.

Learning Point:

This decision drives home the concept that children with disabilities face issues in school due to their disability that is separate and apart from the adequacy of an IEP. The most important action for school districts based on the Court's holding is a review of district policies and procedures on services animals, as well as a review of any pending matters in which use of service animals or other disability accommodation requests are at issue.

The broader impact of the Court's decision moving forward could be that students and their parents can simultaneously seek remedies for denial of a FAPE through the administrative processes of the IDEA as well as damages for disability discrimination through a Federal lawsuit. This two-track approach would undoubtedly drive up legal costs for school districts as two separate matters would need to be defended. School districts should analyze the specific facts of each pending case involving denial of a FAPE in conjunction with counsel to determine whether the matter could potentially blossom into a suit for denial of a request for reasonable accommodation and/or denial of access to services. In addition, some attorneys who represent students and parents may use this decision to circumvent the administrative process by filing in Federal court without first requesting a due process hearing.