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'Fry v. Napoleon Community Schools'—High Court and the Wonder Blunder

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Case Digest Summary

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The case centered around a child by the name of E.F. and her service dog, a golden doodle named Wonder. E.F. was born with spastic quadriplegia, a severe form of cerebral palsy that impairs her motor movement in all four limbs. Aptly named Wonder fosters E.F.'s independence by assisting her with certain living skills such as "retrieving dropped items, helping her balance when she uses her walker, opening and closing doors, turning on and off lights, helping her take off her coat and helping her transfer to and from the toilet." When E.F. was about to start kindergarten, E.F.'s parents, the Frys, requested that the school permit Wonder to accompany E.F. to class. The school refused. Because the school planned to provide E.F. with a human aide, the school asserted that Wonder was an unnecessary accommodation. Unmoved by the school's recalcitrance, the Frys took their dogfight to the Department of Education's Office of Civil Rights (OCR). The Frys contended that the school was discriminating against E.F. under Title II and Section 504 by denying her a reasonable modification. The OCR concurred, and the school turned tail and agreed to allow Wonder to accompany E.F. to class.

A meeting with E.F.'s principal following their OCR win left the Frys feeling uneasy and concerned that the school would resent their daughter for having brought a successful challenge to the school's policy. As a result, they decided to enroll E.F. at a different school. The Frys then released their own hounds by filing a federal lawsuit against the school district asserting the same discrimination claims they filed with OCR and seeking monetary damages for E.F.'s emotional distress.

In concluding that the parents were "barking up the wrong tree," the district court dismissed the case, holding that the Frys were required to preliminarily exhaust their administrative remedies under the IDEA before filing a federal lawsuit. Taking a broad view of the term "educational," the U.S. Court of Appeals for the Sixth Circuit affirmed, holding that IDEA exhaustion is required whenever a parent alleges a harm that is "educational" in nature even where the relief the parent seeks is unavailable through the IDEA, (see Kevin Golembiewski, "A Few Words of Caution As the Supreme Court Considers *Fry v. Napoleon Community Schools*," 73 Wash. & Lee L. Rev. Online 433, 445 (2016). Refusing to be muzzled, the parents appealed to the Supreme Court. The Supreme Court reversed and vacated.

To understand the Supreme Court's opinion, some background regarding the statutes involved is necessary. Congress originally passed the IDEA as the Education for All Handicapped Children Act in 1975. In 1990, Congress renamed the act the IDEA. In exchange for federal funds, the IDEA requires states to guarantee that they will provide a free and appropriate public education (FAPE) to children with certain qualifying disabilities. The primary mechanism for the delivery of FAPE is through an individualized education plan (IEP). An IEP is a customized plan that provides annual educational goals for the child that are typically supposed to be aligned with the general education curriculum along with special education and related services that are reasonably calculated to allow the child to meet those IEP goals. The IDEA also provides a number of resolution procedures for when a dispute arises between a parent and a school district about a student's education. The procedures include the right to have a "due process hearing" before an impartial hearing officer. Parties may appeal the outcome of such a hearing in either state or federal court.

In addition to the IDEA, there are two other laws that provide overlapping protections to children with disabilities —Title II and Section 504. Title II prohibits public entities, including schools, from discriminating based upon a student's disability. Section 504 imposes similar requirements on federal-funding recipients. Both Title II and Section 504, where applicable, also require public entities to reasonably accommodate individuals with disabilities to avoid discrimination. These laws also permit a plaintiff to pursue monetary damages and injunctive relief through court action, whereas most courts have interpreted the IDEA to preclude monetary relief.

In 1984, the Supreme Court held in *Smith v. Robinson*, 468 U.S. 992 (1984), that the IDEA pre-empted claims brought under Section 504 and Title II alleging a denial of FAPE. But Congress legislatively overturned *Smith* in 1986 and added an exhaustion provision codified at 20 U.S.C. 1415(l). Section 1415(l) provides that "nothing [in the IDEA] shall be construed to restrict or limit the rights, procedures and remedies available under" Title II or Section 504, "except that before the filing of a civil action" under Section 504 or Title II "seeking relief that is also available under" the IDEA, parents shall be required to exhaust their IDEA administrative remedies.

Taking a commonsense approach, the *Fry* court interpreted Section 1415(l) to only require exhaustion where the parent is seeking a remedy for a denial of FAPE under the IDEA. To use the court's words, the IDEA "requires exhaustion when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE, even if not phrased or framed in precisely that way." In so holding, the court specifically ruled against the imposition of stricter exhaustion standards such as "whether the suit 'could have sought' relief available under the IDEA"—a standard that is strikingly similar to the one used by the Third Circuit, see *Batchelor v. Rose Tree Media*, 759 F.3d 266, 273 (3d Cir. 2014), (exhaustion turns on "whether the claim could have been remedied by the IDEA's administrative process").

Accordingly, an IDEA parent-plaintiff is now the master of her claim and neither the defendant nor the courts can impose exhaustion requirements where the parent-plaintiff has opted not to seek relief for a denial of FAPE but rather seeks relief for other forms of discrimination.

The *Fry* court also sought to provide guidance to lower courts in determining whether the "gravamen of the complaint seeks redress for a school's failure to provide a FAPE." The court reasoned that, because the right to FAPE protects students only in schools while Title II's and Section 504′s protections extend beyond the school setting, "one clue" to determining the gravamen of the complaint can come from asking a pair of hypothetical questions.

First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school—say, a public theater or library? And second, could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject … . But when the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.

Unfortunately, rather than provide clarity, the court's "clue" seems to muddle the analysis. Indeed, as Justice Samuel Alito points out in the concurrence he unleashed, those "clues make sense only if there is no overlap between the relief available under" the IDEA on the one hand, and Section 504 and Title II, on the other. Suppose in *Fry*, the school district had not offered the human aide and the Frys intended to have Wonder help E.F. access

her education by assisting her with entering classrooms. Under these circumstances, the *Fry* court's questions would still be answered in the affirmative. Yet the gravamen of the complaint would still seem to involve the provision of FAPE; denial of access to her classroom would deny E.F. an appropriate education. A more straightforward and simpler analysis would look to the relief sought by a parent-plaintiff and ask whether it is the type of relief that a hearing officer can order under the IDEA. If the answer to the question is "yes" then exhaustion is required; if the answer is "no," then IDEA exhaustion is unnecessary. Under such a rule, the Frys would not have had to exhaust their administrative remedies because they sought money damages.

Even though the Supreme Court could have set forth a more streamlined rule, the *Fry* decision is important in three notable respects. First, the court's decision limits the number of hoops that parent-plaintiffs will have to jump through to access the courts under Section 504 and the ADA. Second, the *Fry* decision presumably puts the Third Circuit on a shorter leash as it questions the continued validity of *Batchelor v. Rose Tree Media*. Finally, the *Fry* decision gives truth to the old maxim that "every dog has its day." •

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