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U.S. SUPREME COURT RULES IN FAVOR OF PARENTS OF CHILDREN WITH DISABILITIES

Previous editions of the *Elder Law News* have addressed issues of importance to parents of children with disabilities (see the December 2, 2005, edition). Recently, the U. S. Supreme Court ruled that parents of disabled children do not have to hire lawyers to sue school districts when they want to ensure that their children's needs are adequately met.

In the matter of *Winkleman v. Parma City School District* (No. 05-983, May 21, 2007), the Court considered the case of Jacob Winkleman, a child with autism spectrum disorder, who was a student in the Parma City School District in Parma, Ohio. Jacob was covered by the Individuals with Disabilities Education Act (IDEA), which required the school district to develop an individualized education program (IEP) for him. Jacob's parents exercised their statutory right to participate in the IEP development. When Jacob's parents and the school district could not agree on the IEP, the parents exercised their statutory right to participate in administrative proceedings, including an "impartial due process hearing." Dissatisfied with the outcome of the hearing, Jacob and his parents sought further review in the United States District Court for the Northern District of Ohio. Jacob's parents filed their complaint without the aid of an attorney.

The District Court granted the school district's motion for judgment, finding that the school district had provided Jacob with a free appropriate education pursuant to IDEA. Jacob's parents filed an appeal with the Court of Appeals for the Sixth Circuit, again without the aid of an attorney. The Court of Appeals entered an order dismissing the appeal unless Jacob's parents obtained counsel to represent Jacob. The same Court of Appeals had ruled in another recent case that IDEA does not allow nonlawyer parents raising IDEA claims to proceed in federal court without an attorney (*pro se*). The

court had ruled that the right to a free appropriate education does not belong to both the parents and the child, but to the child alone. Therefore, the parents' right to proceed would be derivative of the child's right, and the parents would not be appearing on their own behalf. The court also held that the parents could not litigate IDEA claims on behalf of their child, "because IDEA does not abrogate the common-law rule prohibiting nonlawyer parents from representing minor children." This decision brought the Sixth Circuit in direct conflict with the First Circuit, which had held that IDEA "accords to parents the right to assert claims on their own behalf." Jacob's parents sought review in the U.S. Supreme Court. The Court granted certiorari in order to resolve the disagreement between the circuits on the issue of "whether a nonlawyer parent of a child with a disability may prosecute IDEA actions *pro se* in federal court."

The Court performed a comprehensive review of the relevant statutory provisions of the IDEA, and focused on four specific areas of relevance. First, the IDEA requires school districts to develop an IEP for each child with a disability, with the child's parents as members of the development team. The statute includes protections that apply throughout the IEP process that takes the parents' inputs into account, as well as procedural safeguards that protect the parents' involvement in the process. The purpose of these protections is to "facilitate the provision of a 'free appropriate education'." Second, the IDEA provides criteria regarding the sufficiency of the child's education, including that the education be provided at no cost to parents. Third, the IDEA provides procedural recourse when a party objects to the construction of the IEP, the adequacy of the education provided, or a related matter. Any party must be able to present a complaint, and the review process begins with a preliminary meeting at which the parents of the child discuss their complaint. If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days, then the parents may request an impartial due process hearing. The hearing can be conducted by the local educational agency (with appeal to the state educational agency), or by the state educational agency itself. An aggrieved party may commence suit in federal court after the state educational agency has reached its decision. Fourth, IDEA provides two means of cost recovery. A court or hearing officer is allowed to require a state agency to reimburse the parents for the cost of private school, if the court or hearing officer determines that the agency has not provided a free public education to the child. Further, IDEA prescribes rules under which a court may award attorney's fees, including to "a prevailing party who is the parent of a child with a disability."

Jacob's parents construed these provisions to provide parents with independent, enforceable rights under IDEA, and the Court agreed. The Court said that IDEA contemplated that parents will be the parties bringing administrative complaints. Further, these provisions do not exclude parents who have exercised their rights under the administrative procedures from continuing to try and vindicate those rights by filing a civil action. Although the school district asserted that parental involvement is only collateral to the child's rights, the Court disagreed. IDEA defines among its purposes "to ensure that the rights of children with disabilities and parents of such children are protected." "Rights" refers to the rights of the children as well as the rights of the parents. The Court also disagreed with the school district's assertion that the references to parents are "accommodations to the fact of the child's incapacity," but rather that the "parents have a recognized legal interest in the education and upbringing of their child." The Court thus concluded that the "IDEA includes provisions conveying rights to parents as well as to children," and that parents may be a "party aggrieved" with regard to "any matter" implicating these rights, and not just matters relating to

procedure and cost recovery. Parents are therefore entitled to prosecute IDEA claims on their own behalf, and can do so *pro se*. The Court did not reach the parents' alternative argument, which is whether parents can litigate their child's claims under IDEA *pro se*.

Oast & Hook can help families of children with disabilities plan for their children's educational and other needs. As members of the Special Needs Alliance, Oast & Hook routinely networks with attorneys and other professionals nationwide to keep abreast of the latest developments in special needs planning.

Oast & Hook

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