INDIANA
DISABILITY RIGHTS

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INDIANA DISABILITY RIGHTS' REACTION TO *FRY V. NAPOLEON COMMUNITY SCHOOLS*

Indiana Disability Rights (IDR) believes that the February 22nd Supreme Court decision in *Fry v. Napoleon Community Schools* will provide students with better access to the court system to contest disability-related discrimination at schools. The Court found that a student who wanted to bring her service dog to school did not have to exhaust administrative remedies under the Individuals with Disabilities Education Act (IDEA) prior to bringing a suit under the American's with Disabilities Act (ADA) or § 504 of the Rehabilitation Act.

Both Title II of the ADA and § 504 of the Rehabilitation Act generally prohibit exclusion from a government program, such as education at a public school, by a government agency on the basis of disability. This duty includes the requirement to make reasonable accommodations: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability…" 28 C.F.R. § 35.130(b)(7). The Title II regulations provide specific rules regarding service animals. Generally, the denial of a service animal is the denial of a reasonable accommodation and, therefore, discrimination on the basis of disability.

The IDEA also provides important protections for students with disabilities. This law provides students with disabilities the opportunity to receive a free appropriate public education (FAPE). The school and parent, or the student if over the age of eighteen, work towards creating an Individualized Education Plan (IEP) detailing what services the school will provide for the student with a disability. If the parties cannot agree, there is a formalized administrative process to settle disputes called "due process". One of the provisions of the IDEA law requires students to exhaust administrative remedies before bringing a claim where relief is available under the IDEA, even if the suit is brought alleging violations of other laws such as the ADA or § 504; it requires students to pursue the formalized administrative process in those situations before filing a lawsuit in court. However, there was confusion regarding when relief was available under the IDEA, which led to confusion about when exhaustion was required.

In *Fry*, the Supreme Court found that to show relief was available under the IDEA, there had to be more than "some articulable connection to the education of a child with a disability." The Court came up with two questions to help decide if relief is available through FAPE under the IDEA and thus requiring exhaustion of IDEA administrative remedies: "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 theatre or library? And second, could an adult at the school – say, an employee or visitor – have pressed essentially the same grievance?" The Court determined that if the answer to those questions is yes, and the complaint didn't expressly allege a denial of FAPE, then the IDEA exhaustion requirements need not be met. This decision will allow students important access to the court system – without additional administrative hoops – when there has been a violation of the ADA or § 504 of the Rehabilitation Act unrelated to FAPE.

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The mission of Indiana Disability Rights is to protect and promote the rights of individuals with disabilities through empowerment and advocacy.