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The Individuals with Disabilities Education Act (IDEA): Supreme Court To Decide Whether Parents May Bring Suit *Pro Se*

Nancy Lee Jones
Legislative Attorney
American Law Division

Summary

The Supreme Court granted *certiorari* in *Winkelman v. Parma City School District* (05-983) to determine whether and, if so, under what circumstances non-attorney parents of a child with a disability may bring suit without using an attorney under the Individuals with Disabilities Education Act. The circuit courts are split in their determinations of this issue, with some circuits finding that non-attorney parents may not proceed *pro se*, another circuit holding that non-attorney parents have no limitations on their ability to proceed, and other courts of appeals holding that parents can proceed on procedural claims but must use a lawyer for substantive claims. This report will not be updated.

Background

The Individuals with Disabilities Education Act[1] is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). Originally enacted in 1975, the Act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.[2] The statute contains detailed due

[1] 20 U.S.C. §1400 et seq.

[2] For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142 see CRS Report 95-669, "The Individuals with Disabilities Education Act: Congressional Intent," by Nancy Lee Jones. IDEA has undergone several reauthorizations, including the most recent one which resulted in P.L. 108-446. The sixth circuit in *Winkelman* issued its order after the effective date of P.L. 108-446. For a discussion of this reauthorization see CRS Report RL32716, *The Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made*
(continued...)

process provisions, including the right to bring suit in order to ensure the provision of FAPE. IDEA states in part that "[a]ny party aggrieved by the findings and decision ... made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section...."[3] The judicial decisions concerning the rights of non-attorney parents of children with disabilities to bring suit without an attorney have raised issues concerning whether the parents of a child with a disability are "part[ies] aggrieved" under IDEA. Whether the parents are parties aggrieved depends largely on whether the rights guaranteed under IDEA are guaranteed for the child with a disability, for the parent of such a child, or both. Courts have varied in their views on this issue and therefore on the issue of whether non-attorney parents have the ability to pursue an IDEA case *pro se*.

Lower Court Decisions in *Winkelman v. Parma City School District*

Jacob Winkelman has autistic spectrum disorder and, in accordance with an individualized education program (IEP), was placed in a preschool with the concurrence of both his parents and the Parma City school district. When he was old enough for kindergarten, his parents and school officials disagreed on his proper placement, with his parents alleging that the school's proposed placement at Pleasant Valley elementary school was not appropriate to Jacob's needs. After rulings supporting the school district's determination by the hearing officer and a state-level review officer, the Winkelmans appealed *pro se* to U.S. district court. The district court agreed with the administrative rulings[4] and the Winkelmans appealed, again without a lawyer, to the sixth circuit court of appeals. The court of appeals issued an order dismissing the appeal unless an attorney was obtained within 30 days.[5] The Winkelmans then sought and received a stay of this order from the Supreme Court pending a decision by the Supreme Court. The Supreme Court granted *certiorari* on October 27, 2006.

The sixth circuit decision in *Winkelman* found that the recent sixth circuit decision in *Cavanaugh ex rel. Cavanaugh v. Cardinal Local School District*[6] was dispositive of the question of whether non-attorney parents of a child with a disability could represent their child in court. *Cavanaugh* held that parents could not represent their child in an IDEA action and that the right of a child with a disability to FAPE did not grant such a right to the child's parents. The sixth circuit in *Cavanaugh* first noted that federal law allows an individual to act as their own counsel[7] but that generally parents "cannot appear *pro se* on behalf of their minor children because a minor's personal cause of action is her

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[2] (...continued)
by P.L. 108-446, by Richard N. Apling and Nancy Lee Jones.

[3] 20 U.S.C. §1415(i)(2).

[4] 411 F.Supp.2d 722 (N.D. Ohio 2005).

[5] 150 Fed. Appx. 406 (6th Cir. 2005).

[6] 409 F.3d. 753 (6th Cir. 2005).

[7] 28 U.S.C. §1654. "In all courts of the United States the parties may plead and conduct their own cases personally, or by counsel."

own and does not belong to her parent or representative."[8] Finding that this general principle was not abrogated by IDEA, the sixth circuit observed that IDEA explicitly grants parents the right to a due process hearing but "in stark contrast, the provision of the IDEA granting '[a]ny party aggrieved' access to the federal courts....makes no mention of parents whatsoever."[9] In addition, the court observed that the intended beneficiary of IDEA is the child with a disability, not the parents, and that although IDEA does grant parents some procedural rights, these only serve to ensure the child's substantive right and do not provide the parents with substantive rights.[10]

Other Court of Appeals Decisions

The circuit courts are not all in accord with the sixth circuit in finding that parents may not proceed *pro se* in an IDEA case. Currently, there is a three-way split in their determinations of this issue, with some circuits finding that non-attorney parents may not proceed *pro se*, another circuit holding that non-attorney parents have no limitations on their ability to proceed, and other courts of appeals holding that parents can proceed on procedural claims but must use a lawyer for substantive claims.

Parents May Proceed *Pro Se*. In *Maroni v. Pemi-Baker Regional School District*,[11] the first circuit held that parents have a right to proceed *pro se* on both procedural and substantive grounds. The IDEA language stating that "[a]ny party aggrieved by the findings and decision ... made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section...."[12] was seen as including parents of children with disabilities. This provision was described as not making a distinction between procedural and substantive claims, and the procedural and substantive rights under IDEA were described as "inextricably intertwined."[13] The first circuit noted that there are some "practical concerns" about recognizing parents as aggrieved parties: parents may not be the best advocates for their child as they may be emotionally involved and not able to "exercise rational and independent judgment."[14] In addition, *pro se* litigants were seen as imposing burdens on the courts and schools districts due to poorly drafted or vexatious claims. However, the *Maroni* court rejected these practical concerns finding that, since there is no constitutional right to appointed counsel in a civil case, having a parent represent them was better for children with disabilities than having no advocate.[15]

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[8] *Cavanaugh ex rel. Cavanaugh v. Cardinal Local School*, 409 F.3d 753, 755 (6th Cir. 2005), quoting *Shepherd v. Wellman*,313 F.3d 963, 970-71 (6th Cir. 2002).

[9] *Cavanaugh ex rel. Cavanaugh v. Cardinal Local School*, 409 F.3d 753, 756 (6th Cir. 2005).

[10] *Id.* at 757.

[11] 346 F.3d 247 (1st Cir. 2003).

[12] 20 U.S.C. §1415(i)(2).

[13] 346 F.3d 247, 255 (1st Cir. 2003).

[14] *Id.* at 258.

[15] For a discussion arguing that the *Maroni* court correctly interpreted IDEA see M. Brendhan Flynn, "In Defense of Maroni: Why Parents Should be Allowed to Proceed *Pro Se* in IDEA (continued...)

Parents May Not Proceed *Pro Se*. In addition to the court of appeals decisions in *Winkelman v. Parma City School District* and *Cavanaugh ex rel. Cavanaugh v. Cardinal Local School District* (discussed above), other circuits also have denied parents the right to proceed *pro se*. For example, in *Devine v. Indian River County School Board*,[16] the parents of a child with autism brought suit alleging that the child's IEP was inadequate. Although the parents were represented by an attorney at the beginning of the suit, they informed the court that they wished to discharge the attorney and proceed *pro se*. The court noted that IDEA does allow parents to present evidence and examine witnesses in due process hearings but found

> no indication that Congress intended to carry this requirement over to federal court proceedings. In the absence of such intent, we are compelled to follow the usual rule — that parents who are not attorneys may not bring a *pro se* action on their child's behalf — because it helps to ensure that children rightfully entitled to legal relief are not deprived of their day in court by unskilled, if caring, parents.[17]

Parents May Proceed *Pro Se* on Procedural Claims But Not Substantive Claims. In *Collinsgru v. Palmyra Board of Education*,[18] the parents sought special education services for their son, who they contended had a learning disability. The parents pursued the administrative remedies under IDEA without an attorney, although they did retain a non-attorney expert. The administrative law judge found that the child's difficulties were not severe enough to qualify for special education and rejected the parents' complaint. The parents then filed a civil action in district court. The district court held that the parents could not proceed *pro se* to represent their child and rejected the parents' assertion that the parents were pursuing their own rights.

The court of appeals in *Collinsgru* first found that, under general legal theories regarding *pro se* representation, IDEA did not allow parents to proceed *pro se* to represent their child, stating:

> Congress expressly provided that parents were entitled to represent their child in administrative proceedings. That it did not also carve out an exception to permit parents to represent their child in federal proceedings suggests that Congress only intended to let parents represent their children in administrative proceedings.[19]

The third circuit noted that the requirement of representation by counsel was based on two policy considerations. First, the court found, there is a strong state interest in regulating the practice of law. Requiring a minimum level of competence was described as protecting not only the represented party but also his or her adversaries and the court from poorly drafted or vexatious claims. Second, the court emphasized the importance of the

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[15] (...continued)
Cases," 80 IND. L.J. 881 (Summer 2005).

[16] 121 F.3d 576 (11th Cir. 1997). See also, *Navin v. Park Ridge School District 64*, 270 F.3d 1147 (7th Cir. 2001).

[17] *Id.* at 582.

[18] 161 F.3d 225 (3d Cir. 1998).

[19] *Id.* at 232.

rights at issue and the final nature of the adjudication. A licensed attorney would be subject to ethical obligations and may be sued for malpractice, whereas an individual not represented by an attorney would not have these protections.

The parents in *Collinsgru* argued that because they were, as parents, responsible for their son's education, they had joint substantive rights with their child under IDEA. They noted that parents are often the only available advocates for their child and that attorneys are often unwilling to take IDEA cases because of their specialized and complicated nature and lack of significant retainers. The court expressed some sympathy for these arguments but noted that Congress had provided for attorneys' fees in IDEA and concluded that IDEA's statutory provisions indicated that "the rights at issue here are divisible, and not concurrent."[20] The parents and the child were thus found to possess different IDEA rights: the parents "possess explicit rights in the form of procedural safeguards,"[21] whereas the child possesses both procedural and substantive rights.

Other courts have also found that parents have procedural rights under IDEA, which they can bring suit *pro se* to enforce. In *Mosely v. Board of Education of the City of Chicago,*[22] the seventh circuit observed that IDEA "provides both children and their parents with an elaborate set of procedural safeguards that must be observed in the course of providing the child a free, appropriate public education."[23] Citing *Collinsgru* for the proposition that IDEA confers different rights on parents and children, the court found that the parent's procedural rights were enough of an interest to allow a *pro se* suit to enforce these parental rights to proceed. Similarly, in *Wenger v. Canastota Central School District,*[24] the second circuit denied a parent's attempt to bring a suit *pro se* on behalf of his child but stated that the parent "... is, of course, entitled to represent himself on his claims that his *own* rights as a parent under the IDEA were violated...."[25]

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[20] *Id.* at 236.

[21] *Id.* at 234.

[22] 434 F.3d 527 (7th Cir. 2006).

[23] *Id.* at 532.

[24] 146 F.3d 123 (2d Cir. 1998), cert. denied, 526 U.S. 1025 (1999).

[25] *Id.* at 126.