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Commentary

Parents Get Permission To Go Pro Se

Top Court finds rights under Individuals With Disabilities Education Act

By Amelia Carolla and
Catherine Merino Reisman

In a long-awaited decision, the Supreme Court has held that parents of children with disabilities enjoy their own substantive rights under the Individuals with Disabilities Education Act and can seek to enforce its provisions pro se.

The May 21 decision in *Winkelman v. Parma City School District*, 127 S.Ct. 1994, will have an obvious positive impact on children with disabilities, because it guarantees federal court access to parents who cannot afford to hire an attorney. Perhaps even more important, however, is the tenor of the opinion and its repeated references to the essential role parents play in the special education process.

Winkelman involved the claims of parents of five children, one of whom, Jacob, has been diagnosed with an autism spectrum disorder. Unhappy with the individualized educational program (IEP) proposed by their school district, the parents requested an administrative due process hearing. Dissatisfied with the administrative ruling, the parents sought review of the decision in federal court.

Carolla is an associate in Cherry Hill, and Reisman of counsel in Philadelphia, with Montgomery McCracken. They are co-chairs of the firm's special education practice group and regularly represent parents of children with special needs.

After the trial court ruled that the school district had provided a free appropriate public education to Jacob, his parents appealed to the Sixth U.S. Circuit Court of Appeals. The court dismissed their appeal, saying they needed to retain an attorney for Jacob. The court reasoned that the right to a free appropriate public education belongs to the child alone.

Because the *Winkelmans* would be appearing on behalf of Jacob, they could not invoke the statute allowing parties to prosecute their own claims pro se. Further, the court held, IDEA did not abrogate the rule at common law prohibiting nonlawyer parental representation of minor children.

In reversing, the Supreme Court held that IDEA creates in parents "independent, enforceable rights concerning the education of their children." Thus, in addition to enjoying certain procedural and reimbursement-related rights, parents are entitled to enforce all of IDEA's mandates, including the fundamental right to a free appropriate public education.

The Court noted that, in general, it is not a novel proposition to recognize that parents have a legal interest in the education and upbringing of their children. Turning to the explicit

statutory language in IDEA, the Court cited the following provisions as establishing the fundamental role of parents in securing a free appropriate public education for their children:

- Parents must play a "significant role" in the IEP process.

- The IEP must take into account parental concerns for enhancing the education of their child when formulating a plan, which sets the boundaries for the central entitlement in IDEA to a free appropriate public education.

- IDEA requires states to ensure parents are guaranteed procedural safeguards with respect to the free appropriate public education mandate.

- Parents may seek an administrative hearing on any matter relating to the identification, evaluation, or educational placement of the child or the free appropriate public education mandate.

- If dissatisfied with the outcome of the administrative process, parents may seek redress in court pursuant to the broadly worded authorization in IDEA allowing any aggrieved party to bring a civil action with regard to "any matter" implicating rights under IDEA.

What does this mean for children with disabilities? This decision will undoubtedly promote IDEA's policy of "ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. §

1400(c)(1).

Some parents of children with special needs, often struggling financially to pay for various therapies while at the same time advocating for their children, simply cannot pay for an attorney, even knowing

that the statute provides for reimbursement of fees.

This decision ensures that those parents will also have access to judicial review, thus leveling the playing field not only when they have to go to court, but also when they are

attempting to negotiate amicable settlements. Moreover, the Court's recognition of the importance of parental participation and statutory rights validates the centrality of parental input in the special education process. ■