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DID THE FRY DECISION UNDER THE IDEA OVERTURN ROWLEY?

I. INTRODUCTION

The Supreme Court decided two major cases under the Individuals with Disabilities Education Act [1] (IDEA) during the 2016-17 term--*Fry* v. *Napoleon Community Schools* [2] and *Endrew F. v. Douglas County School District RE-1*. [3] The disability community especially awaited the decision in the *Endrew F*. case because the petitioners had requested the Court to reverse the lower court and reconsider its decision in *Board of Education v. Rowley* [4] by adopting an equal opportunity standard for determining whether an Individualized Educational Program (IEP) [5] was appropriate. Although the *Endrew F*. Court reversed the Tenth Circuit's exceptionally narrow test for determining whether an IEP was appropriate, [6] it declined to reconsider *Rowley*. [7]

The *Fry* case received somewhat less attention because it involved the technical, procedural issue of whether plaintiffs need to exhaust their IDEA remedies [8] before bringing suit under the Americans with ***444** Disabilities Act (ADA) [9] or Section 504 of the Rehabilitation Act of 1973 (Section 504). [10] The Supreme Court reversed the Sixth Circuit's ruling that the Fry family needed to exhaust its IDEA rights [11] and offered guidance on when exhaustion is required. [12] The *Fry* decision seemingly broadened the situations in which parents could pursue remedies under the ADA or Section 504 without exhausting their IDEA remedies.

Ironically, the *Fry* decision may overturn the actual holding in the *Rowley* case--that Amy Rowley, who was deaf, was not entitled to a sign language interpreter in the classroom. [13] This article will argue that today, under the Fry holding, a student with a hearing impairment could attain the right to use a sign language interpreter in the classroom by pursuing her remedies under the ADA or Section 504. This article argues that Fry is a very important decision because it will help students attain greater access to effective communication services without exhausting their IDEA remedies. Part II summarizes the Fry holding and its application by lower courts; Part III assesses the implications of the *Fry* decision in the context of requests for effective communication, and Part IV concludes.

II. THE *FRY* DECISION

A. *Fry* Holding

The Fry case concerns Ehlena Fry, who has cerebral palsy. When she entered kindergarten, the school district provided her with an IEP, which included one-on-one support throughout the day. The parties conceded that she received a free and appropriate public education ***445** (FAPE), [14] as required under the IDEA, through the various educational services provided under her IEP. [15]

The dispute between the Frys and the school district centered on whether Ehlena could bring a trained service dog, a goldendoodle named Wonder, to school with her. Wonder was trained to do the following work: "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." [16]

When this dispute first occurred, the school district agreed to allow Wonder to accompany Ehlena to school on a thirty-day trial basis but, at the end of the trial period, informed the Frys that Wonder was not welcome at the school. The Frys filed a complaint with the United States Department of Education's Office for Civil Rights (OCR) under the ADA and Section 504. OCR rendered a decision in favor of the Frys, but the Frys decided to transfer Ehlena to a new school in a different district because they were concerned that the school administration would "resent" Ehlena and "make her return to school difficult." [17] The Frys, however, persisted in their complaint under the ADA and Section 504. They filed a lawsuit in federal court in which they sought a declaration that the school district had violated the ADA and Section 504 and also sought monetary damages to compensate for Ehlena's injuries. Her injuries were alleged to include emotional distress and pain, embarrassment, and mental anguish. [18]

The district court dismissed the case based on the pleadings, ruling that IDEA exhaustion was required. [19] The Sixth Circuit affirmed, concluding that the parties needed to exhaust their IDEA remedies before filing in federal court under Section 504 or the ADA because the IDEA procedures would have been useful: "Either they would have prevailed and effectively resolved their dispute without litigation, ***446** making it possible for [Ehlena] to attend school with Wonder, or else they would have failed but in the process generated an administrative record that would have aided the district court in evaluating their complaint." [20] The focus of the Sixth Circuit's analysis was whether the Frys could demonstrate, as required by the IDEA, that Wonder's presence was required because it would enhance Ehlena's education by, for example, making her "feel more comfortable and confident." [21]

Reversing the Sixth Circuit, the Supreme Court said the proper test in determining whether IDEA exhaustion is required is whether "the gravamen of a complaint against a school concerns the denial of a FAPE, or instead addresses disability-based discrimination." [22] To answer that question, the Court said that one can gain an important "clue" as to whether the gravamen of an ADA/Section 504 complaint is an IDEA matter by 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?"

- "[S]econd, could an *adult* at the school--say, an employee or visitor--have pressed essentially the same grievance?" [23]

The Court then provided two contrasting examples to show how those rules would be implemented. [24] First, a child uses a wheelchair, and the school building lacks any ramps. Because the child could sue a municipal library or theater for failing to have a ramp under Section 504 or the ADA, she could then sue the school district under Section 504 or the ADA without exhausting her IDEA remedies. Second, a child with a learning disability sues a school district to obtain remedial tutoring in math. Because one could not obtain that kind of relief against a public theater or library, the student would have to exhaust IDEA remedies.

Further, to determine the "gravamen" of a suit, the Court said one might look at whether the parent ever sought to invoke the IDEA's ***447** procedures before switching to the Section 504/ADA remedies. "A plaintiff's initial choice to pursue that process may suggest that she is indeed seeking relief for the denial of a FAPE--with the shift to judicial proceedings prior to full exhaustion reflecting only strategic calculations about how to maximize the prospects of such a remedy." [25]

Although it was clear that the Frys were seeking a remedy that could be obtained against a public theater or a library if they denied a person the right to use a service animal, the Court remanded the case back to the lower courts to determine if the Frys had sought to attain Ehlena's right to use a service dog in school under the IDEA. [26] The remand is currently pending before the Sixth Circuit. Plaintiffs have sought a further remand to the district court to develop the factual record. [27] Defendants have sought a dismissal for failure to exhaust remedies pursuant to the Supreme Court decision in Fry. [28]

The *Fry* decision was pathbreaking in suggesting that students who were seeking services that are available under ADA or Section 504 outside the school setting need not exhaust their IDEA remedies before suing directly in federal court under ADA or Section 504. Although the Frys' case involved access to a service animal in the classroom, Part III will argue that the decision could be especially helpful for students who have effective communication complaints, like requests for sign language interpreters or Braille text.

B. Exhaustion Rule

To better understand the implication of the *Fry* decision, it is helpful to focus on the precise language of the exhaustion rule. This is the exhaustion rule found in the IDEA:

> ***448** (1) Rule of construction
>
> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter. [29]

When both Section 504 and the IDEA cover a student and provide the same potential remedy, this rule requires the plaintiff to exhaust the IDEA procedures before filing suit under Section 504 or the IDEA. The purpose of the rule is to preclude plaintiffs from pursuing remedies under Section 504 rather than using the administrative process established under IDEA, which is supposed to help resolve matters cooperatively and create an administrative record, if litigation occurred. Before the Supreme Court decided *Fry*, lower courts understood that exhaustion of IDEA remedies was *not* required when: (1) students are not covered by the IDEA but are covered by the ADA or Section 504 [30] or (2) IDEA-covered students are seeking relief under the ADA or Section 504 because relief is not available under IDEA. [31]

Ehlena Fry's claim did not readily meet those two exceptions to IDEA exhaustion. She was covered by the IDEA. In fact, she had an IEP and received assistance from a one-on-one aide in the classroom. [32] Further, the relief that she was seeking--the right to bring her service dog to school--is one that a student might attain if her service animal was assisting her in gaining an educational benefit. Thus, the Sixth ***449** Circuit held that IDEA exhaustion was required because the "primary harms of not permitting Wonder to attend school with E.F.--inhibiting the development of E.F.'s bond with the dog and, perhaps, hurting her confidence and social experience at school--fall under the scope of factors considered under IDEA procedures." [33] The Sixth Circuit's framework followed from the IDEA's exhaustion language, which asks whether one is "seeking relief that is also available under [the IDEA]." [34] Before allowing Ehlena to proceed in federal court under Section 504, the Sixth Circuit required IDEA exhaustion to determine if she could have obtained the requested relief under the IDEA. [35]

The Supreme Court in *Fry* developed a test that does not strictly follow from the IDEA statutory language. In an ADA or Section 504 case, when IDEA exhaustion may be required, the *Fry* Court asked *what relief is available under the ADA or Section 504*

outside the educational context, not whether the requested relief is "also available under" [36] the IDEA within the educational context. Applying the Court's criteria, if Ehlena was entitled to bring her service dog to the public library, then she would be permitted to bring her service dog to school; she did not need to exhaust IDEA remedies to protect that right.

So what does this ruling mean "on the ground" as parents and school districts develop ADA/Section 504 plans or IEPs?

Arguably, parents might want to ask school districts to draft Section 504 plans for those accommodations that are available independently of the IDEA, such as an accessible building, permission to bring a service dog in a school building, or sign language interpreter services at all activities. Before the court decided *Fry*, a district court decision in *Kimble v. Douglas County School District* [37] suggested that a parent could choose to drop all IDEA required services and merely ask the school district to provide the services available under Section 504/ADA. In that case, the parents had asked the school district to implement a Section 504 plan that "may designate assistive technologies and ***450** additional curriculum augmentations." [38] After Fry, that strategy would appear to be more appropriate. Parents could request services that are available outside the educational context through a Section 504 Plan and use the courts to challenge such a plan, without IDEA exhaustion, if a school district did not develop an appropriate one. Nonetheless, they could not use that strategy to seek services that are unique to the educational context, such as extra time on testing, if their child could qualify for an IEP and receive such services under the IDEA.

One advantage of the pure Section 504/ADA strategy is that some accommodations, like use of a service animal or an accessible entrance, are clearly guaranteed by ADA/Section 504 without demonstrating that they are educational in nature. Further, such a strategy would allow a parent to sue directly in court, without exhausting IDEA remedies, if the school district failed to offer those accommodations. A disadvantage of this strategy is that some parents *prefer* an IEP to an ADA/Section 504 plan because they like the procedural safeguards provided by the IDEA. [39] For the Frys, benefit existed in pursuing an IDEA remedy because their daughter enrolled in another school and they wanted compensatory damages (which are not available under the IDEA). [40] Thus, the opportunity to skip the IDEA exhaustion process could help them, in theory, attain a quicker legal remedy (if they did not need to first take their case all the way to the United States Supreme Court!).

C. Post-Fry decisions

The lower courts have struggled with how to apply the Fry decision. Two different district court judges reached different exhaustion outcomes in cases involving physical injuries to a child.

Judge Mark W. Bennett concluded that exhaustion is not required in a case decided in the Northern District of Iowa. [41] This case involved a fairly straightforward application of Fry in a context where a school district allegedly engaged in conduct that resulted in physical and ***451** emotional injuries to a seven-year-old child who was autistic. [42] Serious carpet burns and serious psychological and behavioral harm, including PTSD, were caused after he was allegedly dragged across a classroom floor. [43] The parents sought to bring their claims under the Fourth and Fourteenth Amendments, as well as Section 504, rather than the IDEA. [44] The district court allowed the case to proceed (without exhausting the IDEA remedy) because the gravamen of the complaint was "unlawful and unreasonable use of physical force against KG." [45] Although the complaint alleged that the use of force was inconsistent with the IEP, the judge found that those facts made "an indication of the *unreasonableness* of the use of force, not as the *gravamen* of the wrongfulness of the conduct." [46] Further, the IEP violations are not the "central allegations of the wrongfulness of the conduct." [47] The judge carefully offered caution at the end of the opinion that the plaintiffs might not ultimately prevail, but he thought the allegations were strong enough to defeat a motion for summary judgment and avoid exhaustion under the IDEA. [48]

This Iowa case is only a district court decision that conceivably could be reversed on appeal. The judge read the *Fry* decision closely to try to determine what constituted the "gravamen" of the lawsuit. Because a nondisabled child could allege inappropriate physical mistreatment, this case did not hinge on the existence of an IEP. In this case, however, the plaintiffs alleged that the teacher acted inconsistently with the existing IEP and behavior management plan. Had the student stayed at the

school, the parents could have sought closer adherence to the existing plans under the IDEA. However, since the student had transferred to a new school district, no relief would have been available under the IDEA. As in *Fry*, monetary damages were the only appropriate remedy for the student and parents.

***452** In a case with somewhat similar facts, a district court in the Middle District of Tennessee required exhaustion of the IDEA remedies before proceeding under Section 504. [49] In this case, the plaintiffs also alleged that they suffered injuries. Rather than being dragged across a carpet, they alleged that the defendants subjected them to isolation and restraint. In dismissing the case for a failure to exhaust IDEA remedies, Judge Aleta Trauger said:

> The discipline of students is primarily educational in nature and isolations and restraints are considerations for the classroom environment, where students need to have their behavior managed in order to learn effectively .... Isolation and restraint techniques are not implemented on adult employees or visitors of the Knox County schools, nor are they implemented on minors such as the plaintiffs in other public institutions .... [T]he instant action ... is primarily about the alleged denial of a FAPE. [50]

One could imagine that Judge Trauger would have similarly viewed the Iowa case as being merely about behavior management under an IEP and found that exhaustion is required. An important difference between these cases, however, might be that the student in the Iowa case was no longer attending the school at the time the district court case was brought.

In a factually different case involving harassment, the district court in the Western District of Wisconsin found that the plaintiff could proceed on his ADA/Section 504 claim alleging peer harassment without exhausting IDEA remedies. [51] Because the harassment included being called names such as “stupid,” “fat,” “weak,” “fag,” “pussy,” “shit stain,” and “bubble butt,” he alleged discrimination under the ADA, Section 504, and Title IX. [52] While it was true that the plaintiff had autism, the court found that a student who did not have an IEP could have brought his bullying allegations. [53] Plaintiff sought a “harassment-***453** free environment” rather than a FAPE. [54] Presumably, the court would have allowed the case to go forward even if the epithets had been exclusively disability related because a harassment-free environment is a right more suited to an ADA claim than an IDEA claim.

In cases involving somewhat different facts, other courts have ordered IDEA exhaustion post-Fry. In a procedurally complicated case, the grandparents of J.D. tried to use the federal courts to order the school district to continue to pay for their grandchild's residential placement after his parents (and their eight other children) moved to Nicaragua. [55] The dispute between the school district and grandparents appeared to be over the validity of the power of attorney. [56] Those documents are relevant to the issue of whether the child lived in the grandparents' school district. The grandparents had initiated the action under the IDEA's due process procedures. [57] The State Level Review Officer ruled that “stay put” did apply to this case, but she had no jurisdiction in the matter to enter a final order until the juvenile court resolved the issue regarding the power of attorney; [58] therefore, they sought a temporary restraining order in federal court. [59] Nonetheless, the court did not dismiss the claim, pending further briefing on the jurisdictional issue, seemingly recognizing that the state administrative process might prove futile. [60]

Similarly, in *L.D. v. Los Angeles Unified School District*, [61] the court ruled that plaintiffs needed to exhaust their IDEA claim before appearing in federal court. In this case, plaintiffs complained that the school district failed to abide by a settlement agreement that had been reached under the IDEA after they filed for due process. [62] Because the ***454** gravamen of their complaint was the adequacy of the IEP and they had previously sought to vindicate those rights under the IDEA, the court required them to exhaust their IDEA remedies. [63] The court dismissed the case without prejudice, allowing the plaintiffs to re-file once exhaustion had occurred. [64]

The post-Fry cases reflect that the rule announced in Fry may be challenging for lower court judges to apply. If an ongoing administrative complaint is in process, lower court judges are unlikely to allow parties to circumvent those processes by bringing a federal district court claim. If the plaintiff can demonstrate that a nondisabled student or a disabled adult (who is not covered by the IDEA) could seek similar relief, then the courts may allow the plaintiffs to go forward without exhausting IDEA remedies. Further, exhaustion may not be required when the student is no longer attending school in the district so that a new IEP would not be an effective remedy. Further consideration may be required before the courts create a consistent application of the Fry test.

III. COMMUNICATION IMPLICATIONS

Despite the struggle that the lower courts have had in applying the Fry holding, the decision should be especially helpful for parents or students who are seeking accommodations that are explicitly permitted under ADA/Section 504 but are more controversial under the IDEA. This is especially true in the area of communication.

The ADA Title II effective communication regulations (which also apply to Section 504 cases) provide: "A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." [65]

As reflected in the *Rowley* decision, this ADA/Section 504 rule is broader than the IDEA rule. The effective communication rule ***455** specifically asks if communication is "as effective" for a person with a disability as compared to someone who is not disabled. This requirement is referred to as the equal opportunity standard. As the Supreme Court stated in *Rowley* and repeated in *Endrew F.*, the IDEA is *not* an equal opportunity standard. [66]

This emphasis on what kind of communication could be required under ADA/Section 504 would arguably reach a different result in *Rowley.* [67] Amy Rowley's parents had asked the school district to provide a sign language interpreter for Amy when she was in grade school. [68] The school district refused, arguing that Amy could obtain a free and appropriate public education without the use of an interpreter because she continued to advance successfully from grade to grade without one. The Supreme Court agreed with the school district, concluding that the IDEA does *not* create an equal educational opportunity standard. The IDEA "generates no additional requirement that the services so provided be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" [69] Instead, the Court concluded that a school district merely must provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." [70] In Amy's case, the Court found she could benefit educationally without a sign language interpreter. [71]

But, if Amy's parents had pursued a sign language interpreter under Section 504, they could have sought that accommodation without exhausting their IDEA remedies because Amy would have been entitled to a sign language interpreter were she to attend a lecture at a museum or public library under the effective communication regulation. As the Title II Section by Section analysis explains: "Sign language or oral interpreters, for example, may be required when the information being communicated in a transaction with a deaf individual is complex, or is ***456** exchanged for a lengthy period of time." [72] The school day, like a public lecture, easily satisfies this rule. Under the ADA/Section 504, Amy Rowley is entitled to an interpreter during the school day--even if she could benefit educationally without one--because she is entitled to have access to oral communication on the same basis as nondisabled students. The record in the *Rowley* case clearly established that Amy Rowley missed a great deal of oral communication by relying on lip reading. Although her parents unsuccessfully argued that the equal opportunity standard should be incorporated into the IDEA, the *Fry* case seems to import that standard into educational cases in which students are seeking an accommodation they could get outside the educational context.

Even before the Ninth Circuit decided Fry, the Ninth Circuit had applied the effective communication standard to a school-age child who wanted Communication Access Realtime Translation (CART) services under the ADA even though the Hearing Officer had ruled that the child was not entitled to CART under the IDEA. [73] This was not an exhaustion case; the parents had first brought the IDEA action before pursuing the Section 504 lawsuit. The Ninth Circuit ruled that the school district's compliance with the IDEA standard did not preclude the parents from pursuing a claim under the ADA Title II's effective communication regulation. Following the decision by the Ninth Circuit, the parties reached a settlement agreement in the amount

of $197,500.[74] Because it is clear this relief is not available under the IDEA, after *Fry*, a parent could theoretically always pursue this matter under the ADA effective communication regulation rather than waste time pursuing it under the IDEA's more limited rules regarding FAPE.

*457 IV. CONCLUSION

In their concurrence, Justices Alito and Thomas disagreed with the usefulness of the "clues" provided by the majority in Fry.[75] They argued that the clues "are likely to confuse and lead courts astray."[76] Their initial prediction seems to be accurate. As discussed in Part II, courts have reached different exhaustion outcomes on similar facts. Nonetheless, this article argues that cases proceeding under the ADA/Section 504 effective communication guidance should easily fall under the *Fry* exhaustion exception. Today, a student, such as Amy Rowley, who has a hearing impairment should be able to sue under ADA/Section 504 to attain a sign language interpreter rather than argue that such assistance is required under the IDEA.

Footnotes

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1 Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (2012 & Supp. III 2015).

2 E.F. *ex rel*. Fry v. Napolean Cmty. Sch., 137 S.Ct. 743 (2017).

3 Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988 (2017).

4 Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

5 An Individualized Education Program is "a written statement for each child with a disability that is developed, reviewed, and revised" each year to reflect the individual educational needs of that child. 34 C.F.R. § 300.320 (2017).

6 Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 798 F.3d 1329, 1330 (10th Cir. 2015), *vacated and remanded*, 137 S.Ct. 988 (2017).

7 *Endrew F*, 137 S.Ct. at 1001.

8 *See* 20 U.S.C. § 1415(1) (2012) (exhaustion rule).

9 42 U.S.C. § 12101-12213. (2012 & Supp. III 2015).

10 Rehabilitation Act of 1973, Pub. L. No. 93-112, tit. V, § 504, 87 Stat. 394 (codified as amended at 29 U.S.C. § 794 (2012 & Supp. III 2015)).

11 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Sch., 788 F.3d 622 (6th Cir. 2015), *vacated*, 137 S.Ct. 743 (2017).

12 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743, 757 (2017).

13 Bd. of Educ. v. Rowley, 458 U.S. 176, 210 (1982) ("In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by the Furnace Woods school administrators to meet her

educational needs, the lower courts should not have concluded that the Act requires the provision of a sign-language interpreter.").

14 The term "free and appropriate public education" means special education and related services that are consistent with the IEP and are provided at public expense. *See* 20 U.S.C. § 1401(9) (2016).

15 *See* E.F *ex rel*. Fry v. Napolean Cmty. Sch., 137 S.Ct. 743, 751 n.2 (2017).

16 *Id.*

17 *Id.*

18 *Id.* at 752.

19 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Sch., 2014 WL 106624, *1 (E.D. Mich. Jan. 10, 2014), *aff'd*, 788 F.3d 622 (6th Cir. 2015), *vacated*, 137 S.Ct. 743 (2017).

20 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Sch., 788 F.3d 622, 629 n.11 (6th Cir. 2015), *vacated*, 137 S.Ct. 743 (2017).

21 *Id.*

22 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743, 756 n.2 (2017).

23 *Id.*

24 *See id.* at 756.

25 *Id.* at 757.

26 *Id.* at 758-59 ("Accordingly, on remand, the court below should establish whether (or to what extent) the Frys invoked the IDEA's dispute resolution process before bringing this suit. And if the Frys started down that road, the court should decide whether their actions reveal that the gravamen of their complaint is indeed the denial of a FAPE, thus necessitating further exhaustion.").

27 Brief of Plaintiffs-Appellants at 13, E.F. *ex rel*. Fry v. Napolean Cmty. Sch., 788 F.3d 622 (No. 14-1137) (6th Cir. May 17, 2017).

28 Defendants-Appellees' Supplemental Brief at 27, *Fry*, 788 F.3d 622 (No. 14-1137) (6th Cir. June 16, 2017).

29 *See id.* at 13 (quoting 20 U.S.C. 1415(I) (2012)).

30 *See, e.g.*, Reid v. Prince George's Cty. Bd. of Educ., 60 F. Supp. 3d 601 (D. Md. 2014) (seeking relief for failure to take precautions to ensure student's safety on bus when student was no longer in school system and only sought monetary damages).

31 *See, e.g.*, D.M. v. N.J. Dep't of Educ., 801 F.3d 205 (3d Cir. 2015) (seeking relief from New Jersey Department of Education when relief was not available under IDEA); Muskrat v. Deer Creek Pub. Schs., 715 F.3d 775 (10th Cir. 2013) (seeking remedy for alleged physical abuse when alleged incidents appeared to serve no legitimate educational or disciplinary goal); M.G. v. N.Y.C. Dep't. of Educ., 15 F. Supp. 3d 296 (S.D.N.Y. 2014) (seeking prospective relief in the form of alteration of city's policies or general practices).

32 E.F. *ex rel*. Fry v. Napoleon Cmty. Schs., 137 S.Ct. 743, 751 (2017).

33 E.F. *ex rel*. Fry v. Napoleon Cmty. Schs., 788 F.3d 622, 628 (6th Cir. 2015), *vacated*, 137 S.Ct. 743 (2017).

34 *Id.* at 626.

35 *Id.* at 631.

36 20 U.S.C. § 1415(1) (2012).

37 Kimble v. Douglas Cry. Sch. Dist., 925 F. Supp. 2d 1176, 1184 (D. Colo. 2013).

38 *Id.* at 1179.

39 *See* 20 U.S.C. § 1415 (2012).

40 *See* E.F. *ex rel*. Fry v. Napoleon Cmty. Schs., 137 S.Ct. 743. 752 (2017).

41 *See* K.G. v. Sergeant Bluff-Luton Cmty. Sch. Dist., No. C 15-4242-MWB, 2017 WL 1098829, at *11-13 (N.D. Iowa Mar. 23, 2017).

42 *Id.* at *3.

43 *Id.*

44 *Id.* at *4.

45 *Id.* at *12.

46 *Id.*

47 *Id.*

48 *Id.* at *20.

49 *See* N.S. ex rel. J.S. v. Tenn. Dep't of Educ. 2017, No. 3:16-cv-0610, 2017 WL 1347753 (M.D. Tenn. Apr. 12. 2017).

50 *Id.* at *11 (citations omitted).

51 *See* Bowe v. Eau Claire Area Sch. Dist., No. 16-cv-746-jdp, 2017 WL 1458822 (W.D. Wis. Apr. 24. 2017).

52 *Id.* at *1.

53 *Id.* at *5.

54 *Id.*

55 *See* J.D. v. Graham Local Sch. Dist. Bd. of Educ., No. 3:17-cv-143, 2017 WL 1807626 (S.D.Ohio May 5, 2017).

56 *See id.* at *1.

57 *Id.* at *2-3.

58 *See id.* at*4.

59 *See* First Motion for Temporary Restraining Order by Plaintiffs B.D., D.D., J.D., L.H., J.D. v. Graham Local Sch. Dist. Bd. of Educ., No. 3:17-cv-143, 2017 WL 1807626 (S.D. Ohio May 5, 2017).

60 *J.D.*, 2017 WL 1807626, at *4.

61 L.D. v. L.A. Unified Sch. Dist., No. CV 16-8588-MWF, 2017 WL 1520417 (CD. Cal. Apr. 26, 2017).

62 *Id.* at *1.

63 *Id.* at *3

64 *Id.*

65 28 C.F.R. § 35.160(a)(1) (2017).

66 *See* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988, 1001 (2017).

67 Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

68 *Id.* at 185.

69 *Id.* at 198.

70 *Id.* at 203.

71 *Id.* at 211-12.

72 U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., TITLE II TECHNICAL ASSISTANCE MANUAL: COVERING STATE AND LOCAL GOVERNMENT PROGRAMS AND SERVICES § II-7.1000 (2010).

73 *See* K.M. *ex rel*. Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088 (9th Cir. 2013).

74 *See* K.M. *ex rel*. Bright v. Tustin Unified Sch. Dist., 78 F. Supp. 3d 1289, 1295-97 (CD. Cal. 2015).

75 *See* E.F. *ex rel*. Fry v. Napolean Cmty. Sch., 137 S.Ct. 743, 759 (2017). (Alito, J. & Thomas, J. concurring).

76 *Id.*

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