



NO PETTING: IDENTIFYING AND REGULATING STUDENT SERVICE ANIMAL NEEDS

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TODAY WE WILL ADDRESS . . .

- ✖ Public schools are subject to three major federal antidiscrimination laws applicable to individuals with disabilities, to include:
 - + The Americans with Disabilities Act
 - + Section 504 of the Rehabilitation Act of 1973
 - + The Individuals with Disabilities Education Act

TODAY WE WILL ADDRESS...

✖ Specifically:

- + Rights guaranteed under each Act
- + Enforcement of each Act
- + Damages for violations of each Act
- + Case Studies
- + Considerations

AMERICANS WITH DISABILITIES ACT

- ✗ “No qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

- ♦ 42 U.S. C.
§ 12132



TITLE II OF THE AMERICANS WITH DISABILITIES ACT



- + Forbids any public entity from discriminating based on disabilities
- + Requires a public entity to make reasonable modifications to its policies, practices, or procedures” when necessary to avoid such discrimination

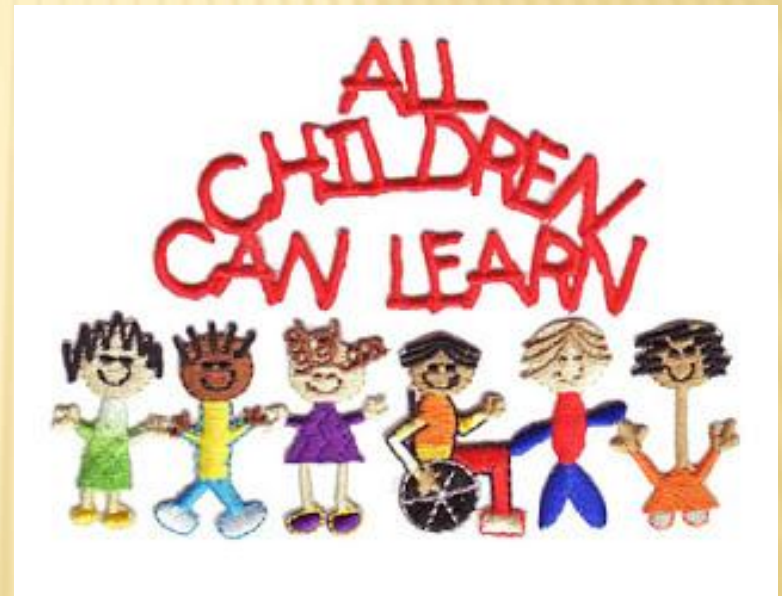
SECTION 504 OF THE REHABILITATION ACT OF 1973



- ✘ “No qualified [disabled] person shall, on the basis of [disability], be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.”

SECTION 504

- ✖ Forbids any federally funded program or activity from discriminating based on disability
 - + Requires modifications to existing practices in order to “accommodate” persons with disabilities.



AMERICANS WITH DISABILITIES ACT & SECTION 504

- ✗ To the extent possible, courts interpret the ADA and Rehabilitation Act to impose similar requirements.
 - ★ *Helper v. Wake Forest University*, 669 F.3d 454 (4th Cir. 2012)
- ✗ The reasonable modification requirement under the ADA is interpreted the same as the Section 504 reasonable accommodation requirement.



REASONABLENESS

- ✗ A school is not required to accommodate a student's disability until he provides a proper diagnosis and requested accommodation
- ✗ Accommodations must be reasonable and cannot impose:
 - + Undue financial and administrative burdens
 - + Require fundamental alteration of the nature of the program

SO WHERE'S THE DIFFERENCE



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- ✗ Under the ADA, a school may be held liable for discrimination if a student's disability was a motivating cause of the exclusion.
- ✗ Under Section 504, a school may be held liable for discrimination only if the student was excluded solely on the basis of his disability.

ADA AND SECTION 504

- ✖ Authorize individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or money damages upon failure to reasonably accommodate or modify.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

- ✖ Federal government provides funding to States to ensure that children with disabilities receive needed special education services
 - + Guarantees a “Free Appropriate Public Education”
 - 20 U.S. § 1412



FAPE

- ✗ FAPE is comprised of special education and related services, both instruction tailored to meet a child's unique needs and sufficient supportive services to permit the child to benefit from that instruction.



IDEA

- ✗ “Nothing in the IDEA shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act [including §504], 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 [the IDEA], the [IDEA’s administrative procedures] shall be exhausted to the extent as would be required had the action been brought under [the IDEA].”

★ Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743 (2017) (quoting 20 USC § 1415(I))

IDEA

- ✗ IDEA does not prevent suit under other federal antidiscrimination laws even if the suit is due to what amounts to be a denial of a free appropriate public education.
- ✗ Rather, IDEA simply requires exhaustion of its administrative procedures if the basis of the suit amounts to a denial of a free appropriate public education

IDEA

- ✘ However, if a suit is brought under a different law but seeks the same relief available under the IDEA, the plaintiff must exhaust administrative procedures
- ✘ Exhaustion is not necessary when the plaintiff alleges something other than the denial of a free appropriate public education

34 CFR § 300.510 – IDEA'S EXHAUSTION PROCEDURES

- ✘ District must provide meeting with parent and relevant member(s) of IEP team within 15 days of receiving notice of parent's complaint
- ✘ If complaint not resolved to the satisfaction of the parent within 30 days, a due process hearing may occur
- ✘ Due process hearing must occur and final decision must be made within 45 days after the resolution period has ended.

WHY IS IDEA'S EXHAUSTION REQUIREMENT BENEFICIAL?

- ✗ Protects the administrative agency authority by giving the agency an opportunity to correct its own mistakes with respect to the programs it administers
- ✗ Promotes efficiency, claims generally can be resolved much more quickly and economically in proceedings before an agency rather than litigation.

4TH CIRCUIT'S EXCEPTIONS TO EXHAUSTION

- ✗ Student must show that undertaking the administrative procedures necessary to accomplish exhaustion:
 - + Would work a severe harm to the student or
 - + Would be futile.
- ✗ MM v. School District of Greenville County, 303 F.3d 523, 535-36 (4th Cir. 2002).

IDEA PROCEDURAL SAFEGUARDS

- ✖ Parent must file a complaint as to any matter concerning FAPE
- ✖ Participate in a preliminary meeting with district or pursue mediation
- ✖ Attend due process hearing before an impartial hearing officer
 - + Hearing officer must determine whether the child received FAPE

PROCEDURAL SAFEGUARDS CONT.

- ✖ If due process hearing is held at the local level, it is appealable to the state agency
- ✖ After which the parent may seek judicial review by filing a civil action



IDEA REMEDIES

- ✗ FAPE is the only relief the IDEA makes available
 - ✗ Hearing officer cannot order an accommodation or modification that is not needed to provide a FAPE but which might be required under ADA and IDEA
- ✗ Although providing a FAPE to the student could result in some cost to the District, student cannot receive money damages under IDEA

DISTRICT OBLIGATIONS

- ✘ Public schools' obligations under ADA and Section 504 go beyond providing educational services, a school could offer FAPE to a child and still violate ADA and Section 504

WHAT IS A SERVICE ANIMAL

- ✗ ADA/Section 504 definition:
- ✗ A dog that has been individually trained to do work or tasks for an individuals with a disability.
 - + Tasks performed must be directly related to the person's disability
 - ✗ Pulling wheelchair, retrieving dropped items, alerting a person to a sound, medication reminder, pressing an elevator button
 - ★ Under ADA service animals are limited to dogs but entities must make reasonable modifications in policies to allow the use of miniature horses if they have been individually trained

ARE EMOTIONAL SUPPORT ANIMALS CONSIDERED SERVICE ANIMALS

- ✗ Not according to the ADA and Section 504
- ✗ Emotional support animals provide companionship, relieve loneliness, help with anxiety and certain phobias
- ✗ Emotional support animals do not have special training to perform tasks that assist with disabilities and are not limited to assisting people with disabilities.
- ✗ Does IDEA require districts to allow emotional support animals?
 - + Maybe.



ANY REQUIREMENTS FOR THE SERVICE ANIMAL

- ✗ Does a service animal have to wear an identifying patch or vest?
- ✗ Does the service animal have to be professionally trained?
- ✗ Vaccination?
- ✗ Registered?
- ✗ Limited to a specific dog breed?
- ✗ Does the animal have to have a harness, leash, or other tether?



HANDLER'S RESPONSIBILITIES



- ✗ Control the animal
- ✗ Animal must be house broken
- ✗ Care and supervision of the animal
 - + Uncontrolled barking
 - + Jumping on other people
 - + Running away from handler
 - + Pose a direct threat to the health or safety of others

CASE STUDY: FRY V. NAPOLEON CMTY.

- ✘ Student with severe cerebral palsy obtained a service dog as recommended by pediatrician.
- ✘ Wonder, service dog, aided the student in retrieving dropped items, helping her balance when she used 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.
- ✘ Wonder was not allowed to accompany the student to kindergarten

✖ School's rationale –

- + Student's existing IEP, provided a one-on-one support throughout the day which would render Wonder "superfluous."
- + Student's "physical and academic needs were being met through the services/programs/accommodations" that the school had already agreed to.

FRY

- ✘ Student complained that the school's refusal to allow Wonder to act as a service dog denied her equal access to public facilities
- ✘ Does this implicate student's FAPE?



CASE STUDY A.S. V. CATWBA COUNTY

- ✘ Student suffered from static encephalopathy, fetal alcohol spectrum disorder, mild developmental delay, sensory integration difficulties, sleep apnea, insomnia, obsessive-compulsive traits, and pervasive developmental disorder
- ✘ Aggressive and self-injurious behaviors, hyperactivity, lack of impulse control, elopement, and other problematic/dangerous conduct

A.S. V. CATAWBA COUNTY

- ✖ Student worked with Chatham to provide therapy through actual physical contact
- ✖ Student had an IEP plan that did not deem Chatham necessary
- ✖ School denied request to allow Chatham but allowed student to go home and nap with Chatham each day. (did not impact instruction)

A.S. V. CATAWBA

- ✕ Student brought complaint seeking:
 - + Declaratory judgment of violation of ADA and §504
 - + Injunctive relief to allow Chatham to assist student at school
 - + Monetary damages to compensate for retraining costs
 - + Reasonable costs and attorney's fees
 - + Does this suit implicate the student's right to FAPE?

A.S. V. CATAWBA

- ✖ Evidence showed:
- ✖ Student's day to day behavioral issues are subject to successful management by techniques currently applied in school setting
- ✖ Student made progress in a number of areas during the school year without Chatham.

FRY

- ✖ Court found that Student was required to exhaust IDEA procedures as student was essentially claiming denial of FAPE

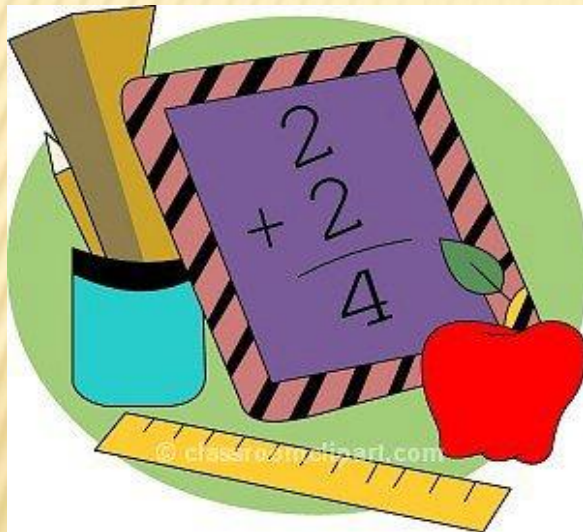


FRY CONSIDERATIONS

- ✖ Could the student have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school?
- ✖ Could an adult at the school, employee or visitor, have pressed essentially the same grievance?



EXAMPLE 1



- ✗ A student with a learning disability complains about the school's failure to provide remedial tutoring in mathematics
 - + Failure to make a reasonable accommodation?
 - + Could the student bring this complaint against a public library?
 - + Could an employee or visitor bring such a complaint?

EXAMPLE 2

- ✗ Wheelchair bound student complains about lack of access ramps at school?
 - + If the child cannot enter the school his education is impacted
 - + Can the child bring the same complaint against a public library?
 - + Would an employee or visitor be able to bring the same complaint against the school?



RESOURCES

- ✘ Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743 (2017)
- ✘ A.S. v. Catawba County Bd. of Educ., No. 5:11CV27-RLV 2011 U.S. Dist. LEXIS 87071 (W.D. N.C. August 5, 2011).
- ✘ Helper v. Wake Forest University, 669 F.3d 454 (4th Cir. 2012)
- ✘ National Network – Information, Guidance, and Training on the Americans with Disabilities Act
 - + <https://adata.org/publication/service-animals-booklet>
- ✘ U.S. Department of Justice, Civil Rights Division, Disability Rights Section
 - + https://www.ada.gov/regs2010/service_animal_qa.html

THANK YOU

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