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## NCOSEA Voice

*The judge who always likes the results he reaches is a bad judge.*

—Justice Antonin Scalia

Two cases during the 2016 term are particularly relevant to our work in education: *Fry vs. Napoleon Community Schools* and *Andrew F. vs. Douglas County School District RE-1*. Both addressed the Individuals with Disabilities in Education Act (IDEA).

In *Fry*, the parents of a child with severe cerebral palsy sought permission for her service dog Wonder to attend kindergarten with her. The school denied the request, finding it unnecessary because the student has a human aide provided for under her individual education plan (IEP). Her family began homeschooling her and filed a complaint with the Office for Civil Rights (OCR), claiming a violation of Title II of the Americans with Disabilities Act and § 504. OCR agreed. Although the school invited her to return, the student and Wonder enrolled elsewhere. Her parents filed a complaint in federal court alleging violation of Title II and § 504 and seeking declaratory and monetary relief. The district court dismissed the complaint, holding that 20 U.S.C. § 1415(l) required the family to first exhaust IDEA administrative remedies. The appeals court affirmed the finding that § 1415(l) applies whenever a plaintiff's alleged harms are "educational" in nature.

The Supreme Court said that exhaustion of IDEA administrative procedures is unnecessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee of a "free appropriate public education" (FAPE). The case was remanded to the appeals court to determine if the

complaint represented denial of a FAPE.

In the second case, a child with autism received annual IEPs from preschool through the fourth grade, at which time his parents believed his academic progress had stalled. When the district presented an IEP for his fifth grade year similar to past ones, his parents enrolled him in a private school, where he made significant progress. Andrew F.'s parents filed a complaint under IDEA seeking tuition reimbursement from the Colorado Department of Education. The lower court interpreted *Rowley* to establish a rule that a child's IEP is adequate as long as it is calculated to confer a more than *de minimis* educational benefit.

In rejecting the *de minimis* standard, the Supreme Court held that a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. The court vacated the lower court decision and remanded it. While the decision's full impact has yet to be determined, one takeaway is that adequacy of an IEP turns on the circumstances of the child for whom it was created.

Another case that attracted a fair bit of press was *Trinity Lutheran Church of Columbia, Inc. v. Comer*. The court held that the Missouri Department of Education's denial of a grant for a church-operated preschool's playground resurfacing violated Trinity's 1st Amendment rights by denying the church an otherwise available public benefit on account of its religious status. Thus, government entities can give money to religious entities, but it must be for a secular purpose. ■