

## Supreme Court Holds that Parents Do Not Require Representation in Federal Court for IDEA Claims, and Further Broadens Parental Rights

As a result of the May, 2007 United States Supreme Court decision in *Winkelman by Winkelman v. Parma City Sch. Dist.*, parents of eligible children do not need to hire an attorney to represent their child's interests under the IDEA in federal court proceedings. In addition, during the course of examining this relatively narrow question, the Court also concluded that the IDEA grants parents independent, enforceable rights that are not limited only to procedural and reimbursement-related issues.

In *Winkelman*, the parents of an eligible child sought to appeal an unfavorable administrative ruling, but did not believe that they should be mandatorily required to hire an attorney to represent their child's interests in federal court. Prior to this appeal to the Supreme Court, the Sixth Circuit had held that the right to a free and appropriate public education ("FAPE") belonged only to the eligible child, and that because the IDEA did not abolish the common law principle barring non-lawyers from representing minor children, that the parents could not proceed *pro se* in federal court on an IDEA claim. To this end, the Sixth Circuit court issued an order dismissing the parents' IDEA claims unless they obtained an attorney.

On appeal, the parents argued that although the IDEA may be silent on whether parents require attorney representation for claims at the federal level, that because the IDEA clearly contemplates that parents may represent themselves in administrative complaint forums, that mandating counsel upon federal appeal is an inconsistent demand. In contrast, the school district in *Winkelman* argued that the IDEA clearly limits the enforceable rights of parents to procedural aspects of the law and reimbursement for expenses incurred, and therefore, without express statutory language to the contrary, parents cannot represent their children's FAPE claims in federal court without an attorney.

While the Court observed that the plain language of the IDEA was silent on the issue of whether parents were afforded any level of substantive rights that went beyond mere procedural protections, the Court determined that a broader reading of many of the IDEA's interlocking statutory provisions did not differentiate between the rights afforded to children and the rights afforded to parents. Moreover, because the IDEA also clearly set forth procedures for resolving disputes at the administrative level that did not require parents to employ counsel, the Court concluded that parents also cannot be prevented from exercising rights beyond the administrative level without an attorney.

*Winkelman* effectively overrules the Third Circuit's position on the issue of parents representing their child's interest *pro se* in federal court on IDEA claims. In *Collinsgru v. Palmyra Board of Education*, 151 F.3d 225 (1998), the Third Circuit rejected the assertions that 1) the IDEA allows parents to represent their children at the federal level, or 2) that the IDEA creates a joint right of action for the parents – both propositions that the Supreme Court in *Winkelman* held otherwise.

At this point, it is unclear whether the ability of parents to represent themselves at the federal level on IDEA claims, or the fact that parents have been found to possess independent, substantive rights under the IDEA, will have a significant effect on special education litigation in

Pennsylvania. On a practical level, parents can of course already represent themselves at the administrative level without counsel, however, there is a fear that the *Winkelman* holding could increase the number of lawsuits by parents who are willing to appeal IDEA matters to federal court. In a similar vein, although *Winkelman* does not technically create any new rights for parents under the IDEA that their eligible children did not already possess, there is some concern that the extension of substantive IDEA rights to parents may expand potential causes of action that may be brought under the IDEA.

Clients who have questions regarding this article, or any education law matter, should feel free to contact us at 215-345-9111.