

ACLU, ACLU of Michigan Petition U.S. Supreme Court on Behalf of Girl with Cerebral Palsy Who Was Prevented from Bringing Service Dog to Class

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WASHINGTON, DC—The ACLU of Michigan and the National ACLU today petitioned the US Supreme Court to rule on whether the group can move ahead with a lawsuit filed on behalf of an 11-year-old Jackson, Mich., girl with cerebral palsy who, at age 5, was banned from bringing her service dog to class.

“This case could remove an unauthorized hurdle for victims of discrimination across the county who seek justice for violation of rights guaranteed by the Americans with Disabilities Act,” said Michael J. Steinberg, legal director of the American Civil Liberties Union of Michigan. “It’s time for the Supreme Court to settle a dispute among the lower courts and give Ehlana Fry her day in court. To force a child to choose to between her independence and her education is not only illegal, it is heartless.”

The ACLU petitioned the High Court after the Sixth Circuit Court of Appeals ruled 2-1 that claims brought by plaintiff Ehlana Fry, now age 11, under the Americans with Disabilities Act (ADA) should be thrown out because she never asked for an administrative hearing under a separate law, the Individuals with Disabilities Education Act (IDEA).

However, Judge Martha Daughtrey, pointing to precedent in another federal appeals court, dissented. She stated that IDEA administrative hearings are only required for violations of the ADA if the student is seeking relief that is also available under IDEA and, in this case, the money damages sought by the Frys are not available under IDEA.

The lawsuit was filed in 2012 against the Napoleon School District and the Jackson County Intermediate School District after district officials barred Fry bringing her doctor-prescribed service dog to school.

The lawsuit contends that the districts discriminated against Ehlana in violation of the ADA by failing to make reasonable modifications to their policies and practices. Because Ehlana has a severe form of cerebral palsy that affects her legs, arms and body, she needs assistance with many of her daily tasks.

In October 2009, Ehlana’s family took a major step to help Ehlana become independent when they acquired Wonder, a Goldendoodle that is specially trained to help Ehlana balance, retrieve dropped items, open and close doors, turn on lights and perform many other tasks. Wonder is hypoallergenic and has been trained to stay out of the way when he is not working.

The community helped raise the necessary funds to obtain Wonder. However, the school district barred Ehlana from bringing Wonder to school.

In April 2010, after the ACLU of Michigan advocated on Ehlena's behalf, the school district agreed to allow Wonder to accompany her at school for a "trial period." But school administrators required Wonder to remain in the back of the room during class and he was not allowed to accompany Ehlena during recess, lunch, computer lab, library time and other activities.

At the end of the school year, the district would not acknowledge that Wonder was a service dog, and would not discuss whether they would agree to his return in the fall.

The Frys felt that separating Ehlena and Wonder for several hours a day could prove disastrous for Wonder's training and bonding and made the difficult decision to homeschool Ehlena.

With the help of the ACLU, they also filed a complaint with the Office of Civil Rights (OCR) at the United States Department of Education. In May 2012, the OCR issued a finding that the school district violated Ehlena's rights under the ADA.

In order to settle the matter with OCR, the school district reluctantly agreed to allow Ehlena to attend school with Wonder. However, after meeting with school administrators, Ehlena's parents continued to have serious concerns about the school's attitude toward Ehlena.

Therefore, the Frys enrolled Ehlena in a public school in Washtenaw County where the staff welcomed Ehlena and Wonder and saw their presence as an opportunity to promote diversity and inclusion of students with disabilities within the school.

In addition to Steinberg, the Frys are represented by University of Michigan Law Professor Samuel Bagenstos, Jill Wheaton and James Hermon of the Dykema law firm, National ACLU Disability Counsel Susan Mizner and Claudia Center, and National ACLU Legal Director Steven Shapiro.