

## News & Insights

### SCOTUS Hears Argument for Dykema Pro Bono Client Banned from Bringing Service Dog to Class

November 2, 2016

On October 31, 2016, the U.S. Supreme Court heard arguments on behalf of Ehlana Fry, a 12-year-old Jackson, Michigan, girl with cerebral palsy who, at age five, was banned from bringing her service dog to school.

Dykema member Jim Hermon handled the case at the district court level, and Jill Wheaton, leader of the Firm's appellate practice, handled the case in the Sixth Circuit. In addition to Dykema, the Frys were represented by Michael J. Steinberg and the American Civil Liberties Union (ACLU) of Michigan, National ACLU Disability Counsel Susan Mizner and Claudia Center, National ACLU Legal Director Steven Shapiro, and University of Michigan Law Professor Samuel Bagenstos,

ACLU of Michigan Legal Director Michael J. Steinberg said the case was critical to safeguarding the rights of schoolchildren with disabilities:

"We took this case from rural Michigan to the U.S. Supreme Court so kids with disabilities will not have to experience the humiliation and discrimination that Ehlana faced when she was in kindergarten. It's not only illegal, but it's cruel to make kids choose between an education and Independence."

The lawsuit was filed in 2012 against the Napoleon School District and the Jackson County Intermediate School District by the ACLU of Michigan after district officials barred Ehlana from bringing her doctor-prescribed service dog, Wonder, to school. 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.

The ACLU contends that the districts discriminated against Ehlana in violation of the Americans with Disabilities Act (ADA) by failing to make reasonable modifications to their policies and practices. However, the Sixth Circuit Court of Appeals ruled 2-1 that her claims brought under the ADA should be thrown out because she never asked for an administrative hearing under a separate law, the Individuals with Disabilities Education Act (IDEA). The ACLU argues 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.

"As a parent, I'll never forget the smile on Ehlana's face when she first began working with Wonder and was able to do things on her own without my help. With Wonder by her side, she grew more self-reliant and confident," said Stacy Fry, Ehlana's mother. "We're hopeful that the Supreme Court will make it clear that schools can't treat children with disabilities differently and stand in the way of their independence."

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 Ehlana'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 Ehlana 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.

Because the Frys did not want to separate Ehlana from Wonder for several hours a day, they made the difficult decision to homeschool Ehlana. 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 Ehlana's rights under the ADA.

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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.

For more about the case, including the complaint and a video, [click here](#).

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## **Practice Areas**

Appellate