

*Kimberly H. Graham Et Al. v. Janie R. Friedlander Et Al.*

The issue before the Superior Court in this case arose out of a personal injury claim wherein the plaintiffs sought damages for injuries arising from the negligent hiring of Lore and Spectrum Kids, LLC to provide “autism related services.” The plaintiffs filed suit on behalf of themselves and their four school aged children diagnosed with autism spectrum disorder. The plaintiffs alleged that the Board of Education for the City of Norwalk, the defendants, negligently hired Lore by virtue of their failure to confirm Lore’s credentials, perform background checks on Lore, or supervise the services Lore was hired to perform. The plaintiffs alleged that, as a result, their children experienced “(a) a regression of the progress made to alleviate the symptoms of [autism spectrum disorder], (b) lack of progress in the symptom of autism spectrum disorder, and (c) inability to communicate effectively.” As a result, the plaintiffs also put forth a claim for loss of parental consortium.

The board defendants alternatively filed a motion to dismiss the claims under the administrative exhaustion requirement (§10-76a) contained in the Individuals with Disabilities Education Act. The defendants contend that the plaintiffs’ claim sought relief for denial of the rights provided by the act, despite the fact that the plaintiffs did not claim the defendants had acted in violation of the federal act. The defendants contend that the plaintiffs are therefore subjected to the exhaustion requirement. The defendants further claimed that they were protected by sovereign immunity because they were acting as agents of the state. The Court had to determine whether (1) the plaintiffs were subject to the exhaustion requirement, and (2) whether sovereign immunity protects the defendants from this legal action.

The Court first found that the trial court had ruled incorrectly in dismissing the case based on the plaintiffs’ failure to exhaust all other administrative remedies. The Superior Court

alternatively found that the plaintiffs were not required to exhaust all other administrative remedies before initiating legal action. The Court reasoned that the claims brought forward by the plaintiffs were not subject to the federal exhaustion requirement because the plaintiff was not alleging a violation of the federal laws set forth in the Individuals with Disabilities Education Act for denial of education services. Rather, the plaintiffs merely alleged state common law claims for negligence and loss of parental consortium. In reaching the conclusion that the plaintiffs' claims did not trigger the requirements set forth in §10-76a, the Court applied the decision in *Fry v. Napoleon Community Schools* which established two factors for determining the scope of the exhaustion requirement. The first consideration asks whether the claim could be brought outside of the school setting. In the present case, the answer is yes. The plaintiff could bring forward the same claims of negligent hiring and loss of consortium if the alleged injury had taken place, at say, a special needs summer camp at the hand of a negligently hired camp counselor. The court found, therefore, that "the crux of the plaintiffs' complaint is not the denial of educational services."

The second factor established in *Fry* requires the consideration of the history of the proceedings prior to the plaintiffs filing the complaint. The Court, in their reasoning, acknowledge that "a plaintiff who previously invoked the act's formal procedures to handle the dispute could suggest that relief is indeed being sought for denial of [rights under the act]." In the present case, however, the plaintiffs made no due process claims or "otherwise pursue administrative remedies under the [act]" prior to their negligence and loss of parental consortium claims. Failure to file such due process claims support the fact that the plaintiffs were not seeking remedies for violation of the act and thus are not subject to the exhaustion requirements.

Lastly, the Court found that the defendants cannot prevail in a motion to dismiss the claims brought against them on the basis of sovereign immunity. The Court reasoned that a board of education does, in fact, act as agencies of the state “when they are fulfilling their statutory duties imposed on them pursuant to the constitutional mandate of article 8, §1.” However, local boards of education also act on behalf of municipalities in their function of “maintaining control over the public schools within a municipality’s limits.” Therefore, where a board of education is acting on behalf of a municipality, and not on behalf of the state, sovereign immunity offers them no protection. In the present case, the Court found that the plaintiffs’ action alleged a “violation of duties within [the] municipality’s control” and therefore did not implicate the board’s performance of state functions. The authority to higher special education teachers was delegated specifically to the local board of education, thus falling within the control of the municipality. Therefore, the municipality, rather than the state was subject to liability. As a result, the board has no claim of sovereign immunity and the plaintiffs claim against the board for negligence and loss of consortium may not be dismissed on those grounds.