the claim might leave an impression that the medical judgment of the physician was an insufficient justification for the treatment.

Discussion

In this case, the court addressed the question of whether a government physician had violated the Fourteenth Amendment rights of a man who was committed as an SVP in the state of Washington. There were two primary questions: (1) whether the denial violated the patient's right to reasonable medical care and (2) whether incorporation of race-based treatment outcomes violated the patient's right to equal protection.

In clinical practice, there is not always an indisputable treatment indicated, and providers must incorporate available information and perform risk–benefit analyses to make an informed treatment recommendation. The professional judgment standard recognizes that deference to these types of complex clinical decisions is sometimes warranted. In simpler terms, an available treatment should not always be prescribed solely on the consideration that it is available. In this case, the denial of proposed treatment was not to punish, but rather to protect the patient from an invasive treatment that was anticipated to be ineffective.

The consideration of race in treatment decision-making in this case raised other important and complicated questions. The court determined that officials acting in a medical capacity are required to demonstrate compelling evidence that incorporation of race is narrowly tailored to provide reasonable and appropriate recommendations. The court relied on a high standard of review in the legal consideration of violation of equal protection based on race. The court also cited the context of past known government medical experimentation on minority racial groups in history. In that vein, physicians are at times in the difficult position of looking at race-related data and using the information to help guide clinical decisions. That said, it is equally important for medical professionals to be aware of the risks of discrimination and biases in clinical decision-making and to scrupulously review any actions to ensure uniform and proper application of clinical judgment.

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Defining the Scope of the IDEA's Exhaustion Standard

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The Individuals with Disabilities Education Act's Exhaustion Standard Applies to Civil Suits Only When the Plaintiff's Claim Seeks Relief for Failure to Provide a Free Appropriate Public Education

In *Fry v. Napoleon Community Schools*, 137 S.Ct. 743 (2017), the U.S. Supreme Court vacated a Sixth Circuit Court of Appeals' dismissal of a suit, brought by Stacy and Brent Fry, parents of a child (E.F.) with severe cerebral palsy, under Title II of the American with Disabilities Act of 1990 and § 504 of the Rehabilitation Act of 1973. The case was based on a school administration's refusal to allow E.F.'s service dog to accompany her to class. The lower courts had dismissed the case for failure to exhaust the administrative procedures delineated in § 1415(*l*) of the Individuals with Disabilities Education Act (IDEA). The Supreme Court held that the IDEA's exhaustion standard applies only when the gravamen of a complaint is denial of a Free Appropriate Public Education (FAPE); only then can the IDEA provide a remedy. The Court remanded the case to the Sixth Circuit to determine whether the Frys were seeking relief for the denial of a FAPE.

Facts of the Case

Mr. and Mrs. Fry's child, E.F., had severe cerebral palsy that impaired her mobility and other motor skills. At her pediatrician's recommendation, the Frys obtained a trained service dog, Wonder, to assist E.F. Wonder allowed E.F. to gain a degree of independence, helping her open doors, transfer to and from the toilet, and perform other life activities.

The administration of Ezra Eby Elementary School in Napoleon, MI, denied the Fry's request to allow Wonder to accompany E.F. to kindergarten, claiming Wonder's presence was unnecessary because a human aide provided adequate one-on-one

assistance. In response, Mr. and Mrs. Fry began homeschooling E.F. and lodged a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). The OCR is a branch of the Department of Education which enforces federal civil rights laws. The Frys alleged that the school's refusal to accommodate Wonder violated Title II of the American with Disabilities Act (Title II), 42 U.S.C. § 1213 *et seq* (2008) and § 504 of the Rehabilitation Act (§ 504), 29 U.S.C. § 794 (2009). The OCR agreed, finding that even if a human aide satisfied the IDEA FAPE requirement, the school's actions constituted discrimination.

In response to the OCR decision, the school agreed to allow Wonder to accompany E.F. at school. However, after meeting with the school administration, Mr. and Mrs. Fry became concerned that administrators would resent E.F. and moved her to a different school.

Mr. and Mrs. Fry, on behalf of E.F., filed a federal civil suit against the school principal as well as the local and regional school districts (the school), alleging violations of Title II and § 504. The Frys requested a declaratory judgment and monetary damages. The school moved to dismiss based on the Frys' failure to exhaust the IDEA's administrative procedures. The district court granted the motion to dismiss; the Sixth Circuit affirmed the dismissal, ruling that exhaustion is required when the alleged injuries are "educational" in nature and, thus, related to the substantive protections of the IDEA. The Frys petitioned the U.S. Supreme Court for *certiorari*. *Certiorari* was granted to address the scope of the IDEA exhaustion requirement.

Ruling and Reasoning

In a unanimous ruling, the U.S. Supreme Court rejected the Sixth Circuit's interpretation of the IDEA's exhaustion requirement.

The IDEA provides states with federal funding in exchange for their providing a FAPE to children with disabilities (20 U.S.C. § 1412(a)(1)(A) (2015)). The Handicapped Children's Protection Act (HCPA) was passed in 1986, and amended the IDEA (20 U.S.C. § 1415(*l*) (2004)). The HCPA specifically states that the IDEA does not limit the rights or remedies available under other federal laws (e.g., Title II and § 504). However, it further specifies that if a plaintiff seeks relief "also available" under the IDEA he or she must exhaust the administrative procedures of § 1415 before filing a civil suit. Public schools must comply with the IDEA, Title II, and § 504.

The Court held that § 1415(*l*) only requires exhaustion of the IDEA's administrative procedures before the filing of a civil suit (e.g., under Title II or § 504) when a "suit seek[s] relief for the denial of a FAPE" (*Fry*, p 752). The text of § 1415(*l*) states that exhaustion is only required when a civil action seeks "relief that is also available" under the IDEA (*Fry*, p 750). The IDEA's administrative procedures examine whether a school has met its obligation to provide a FAPE; a hearing officer can only offer relief when a school fails to fulfill this obligation. Accordingly, the administrative procedures in § 1415 only need to be exhausted when a suit alleges failure to provide a FAPE; those are the only circumstances in which the IDEA has relief available. To determine whether this is the case, courts are to look at the gravamen, or substance, of a complaint.

The Court provided guidance for how to determine when a suit seeks relief for failure to provide a FAPE in the form of two "clues." First, it gave two hypothetical questions lower courts can ask: "could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school . . . [a]nd second, could an *adult* at the school . . . have pressed essentially the same grievance?" (*Fry*, p 756, italics in original). If the answer is yes, and the case is not specifically alleging denial of a FAPE, exhaustion is not required.

Next, the Court suggested that when determining the gravamen of a complaint, lower courts should look at the procedural history. If the plaintiff initially used the IDEA's administrative procedures to handle the dispute and then switched in midstream to federal court, this is strong evidence that the gravamen of the plaintiff's complaint is denial of a FAPE.

Discussion

The question on the Frys' petition for *certiorari* was whether "the HCPA commands exhaustion in a suit, brought under [Title II] and [§504], that seeks damages—a remedy that is not available under the IDEA" (Petition for Writ of *Certiorari*, *Fry*, 137 S.Ct. 743 (No. 15-497)). The Court did not decide this point. In their opinion, they specifically left unanswered whether exhaustion is necessary when a complaint involves failure to provide a FAPE, but

seeks a remedy not available in the IDEA (e.g., compensatory damages for emotional distress).

The Court's holding in *Fry* is based on an interpretation of the text and legislative history of the IDEA. Two landmark cases, *Westchester Cty v. Rowley*, 458 U.S. 176 (1982) and *Irving Independent School District v. Tatro*, 468 U.S. 833 (1984), were also based on the IDEA but significant changes in the landscape of special education law occurred between *Rowley* and *Irving*, and *Fry*.

The HCPA was passed in 1986 in direct response to *Smith v. Robinson*, 468 U.S. 992 (1984), which held that the IDEA (then the Education for all Handicapped Children Act, or EHA) was the "exclusive avenue" for challenging the adequacy of a disabled child's education (*Smith*, p 1009). The HCPA "overturned Smith's preclusion of non-IDEA claims while also adding a carefully defined exhaustion requirement" (*Fry*, p 750).

In *Rowley*, the suit was based on denial of a FAPE and occurred after exhaustion of administrative remedies. The holding in *Rowley* focused on defining a FAPE, but the case highlights the concerns raised by Justice Alito in his concurring opinion in *Fry*. He wrote that the "clues" given by the Court were misleading because they assumed there would be no overlap between the relief available under the IDEA and other federal laws. Applying the *Fry* clues to *Rowley* would yield conflicting results. A similar complaint could have been raised outside of a school or by an adult within a school. However, the case was explicitly about denial of a FAPE and used IDEA's administrative remedies.

In *Irving*, the Court was asked whether clean intermittent catheterization of a child with cerebral palsy was a "related service" under the EHA. The parents in *Irving* had filed suit under the EHA, alleging denial of a FAPE (which included "related services"), and under § 504 for exclusion of a handicapped person from a program receiving federal aid. The Court denied the § 504 claim as inapplicable, citing *Smith*, which was decided the same day.

The Court's holding in *Fry* is narrow: plaintiffs need only exhaust the IDEA's administrative procedures when seeking relief for failure to provide a FAPE. Title II defines service animals to include dogs that are trained to do work or perform tasks for the benefit of persons with psychiatric, intellectual, or other mental disability. It is, therefore, foreseeable that future court decisions will extend the *Fry* holding beyond cases involving cerebral palsy to those more relevant to forensic psychiatry (e.g., cases involving autism spectrum disorder or posttraumatic stress disorder).

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Standard of Appellate Review for Postconviction Relief of Intellectually Disabled Defendant's Competency to Plead

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Defendant May Receive Postconviction Relief If There Was a Reasonable Probability That He Was Incompetent to Plead

In *Ramirez v. State*, 795 S.E.2d 841 (2017) the Supreme Court of South Carolina reversed the denial of postconviction relief (PCR) for Ruben Ramirez. Mr. Ramirez alleged inadequate assistance of counsel because his attorney had not requested a second competency-to-stand-trial evaluation when evidence surfaced that Mr. Ramirez was likely incompetent as he pleaded guilty but mentally ill to serious felony charges. The PCR (trial) court denied PCR, which was sustained by the South Carolina Court of Appeals. Reversing, the Supreme Court of South Carolina ruled that a defendant need only prove that there was a reasonable probability that he was incompetent at the time of entering his plea to be granted PCR.

Facts of the Case

Ruben Ramirez was indicted at age 16 for assault and battery with intent to kill, kidnapping, first-degree criminal sexual conduct with a minor, first-degree burglary, and performing a lewd act upon a child. The trial court requested a competency-to-stand-trial evaluation. During a 90-minute interview, Mr. Ramirez told the evaluating psychiatrist that he had no psychological problems, was only in