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# AALS Annual Meeting

Animal Law Section

Co-Sponsored by Disability Law and Law and Mental Disability Sections

January 6, 2017

## ANIMALS AS LIVING ACCOMMODATIONS

*Issues Relating to Service Animals in Schools: What Happens After the Decision in Fry v. Napoleon Community Schools*

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Professor of Law and  
Phyllis and Richard Duesenberg Chair in Law  
Valparaiso University Law School

# Roadmap

Intro to Service Animals in Schools

*Fry v. Napoleon Community  
Schools*

Other Cases of Interest

Impact of State Laws



# Americans with Disabilities Act Service Animal Regulations

Individually Trained

Do Work or Perform Tasks

Includes Psychiatric Service Animals



# Regulations – ADA

## Exclusion of “Emotional Support Animals”

“[a]nimals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being are not service animals”

# Section 504 of the Rehabilitation Act



“no otherwise qualified individual with a disability . . . shall solely by reason of her or his disability . . . be denied the benefits of . . . any program or activity receiving Federal financial assistance.”

# Advice for Advocates of Students



Check Your Applicable State Law

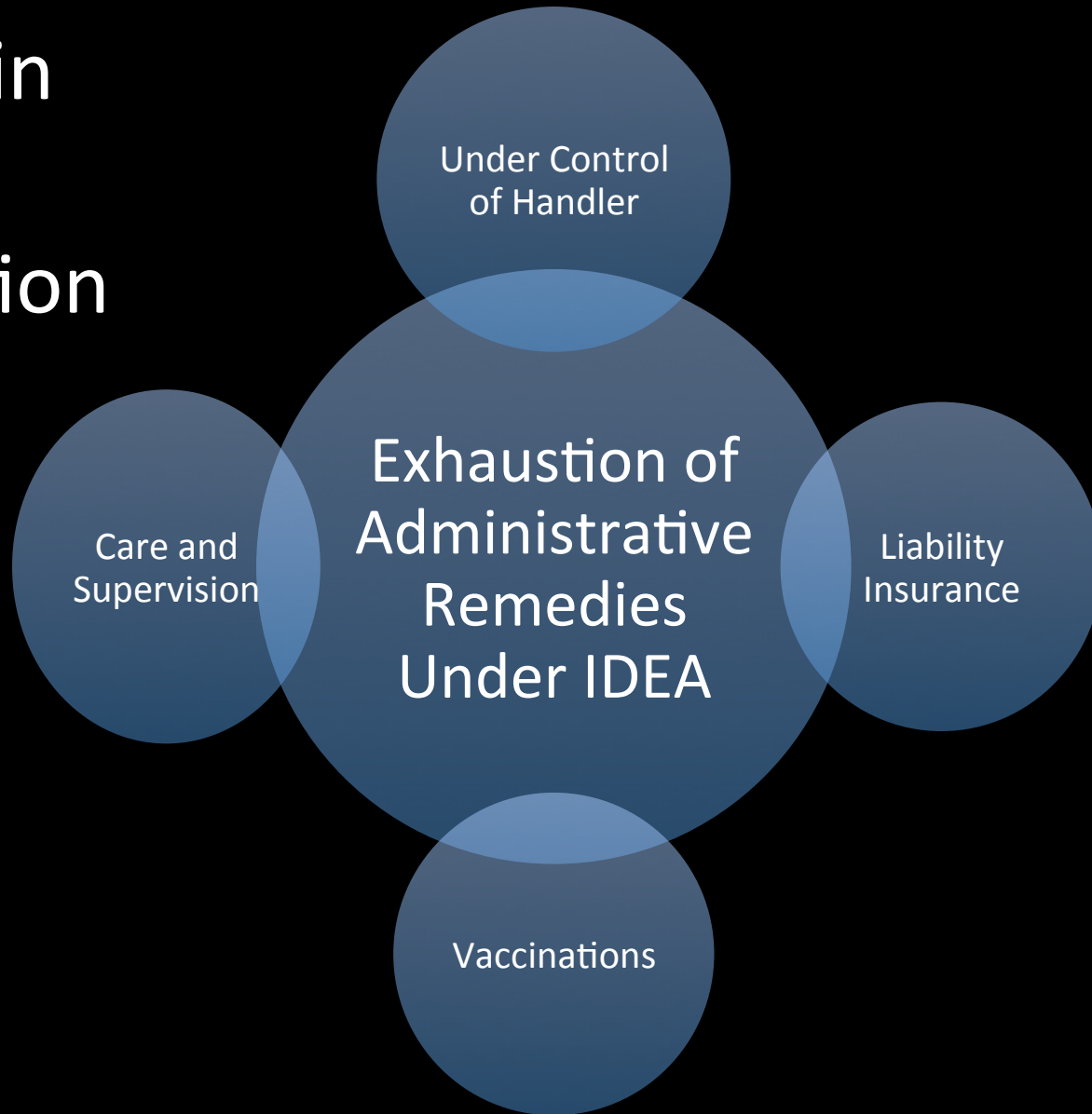


Focus on Access Pursuant to the ADA and  
Section 504 of the Rehabilitation Act  
Individualized Determination



If Unsuccessful, Utilize Individuals with  
Disabilities Education Act's (IDEA) IEP  
Process

# Issues in Recent Education Cases

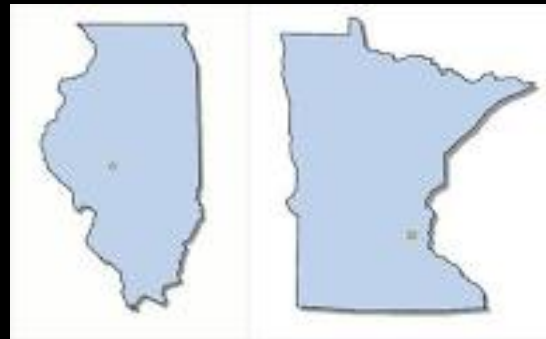


Ehlana Fry and Wonder, Photo Credit: ACLU of Michigan

Fry v. Napoleon  
Comm. Schools,  
788 F.3d 622  
(6<sup>th</sup> Cir. 2015),  
*cert. granted*,  
136 S.Ct. 2540  
(June 29, 2016)  
(No. 15-497)

Oral Arguments  
October 31, 2016

20 U.S.C. § 1415(I)



Former Senator and Former DOE Officials



# Amici Curiae Briefs



# Other Cases of Interest

*Alboniga v. Sch. Dist. Broward Co. Fla*  
(S.D. Fla. 2015)

*U.S. v. Gates-Chili Cent. Sch. Dist.*  
(W.D.N.Y. 2016)

Anthony Merchante and Stevie  
Photo Credit: Miami Herald Feb. 2015

Devyn Pereira and Hannah  
Photo Credit: WHEC.com Aug. 2016

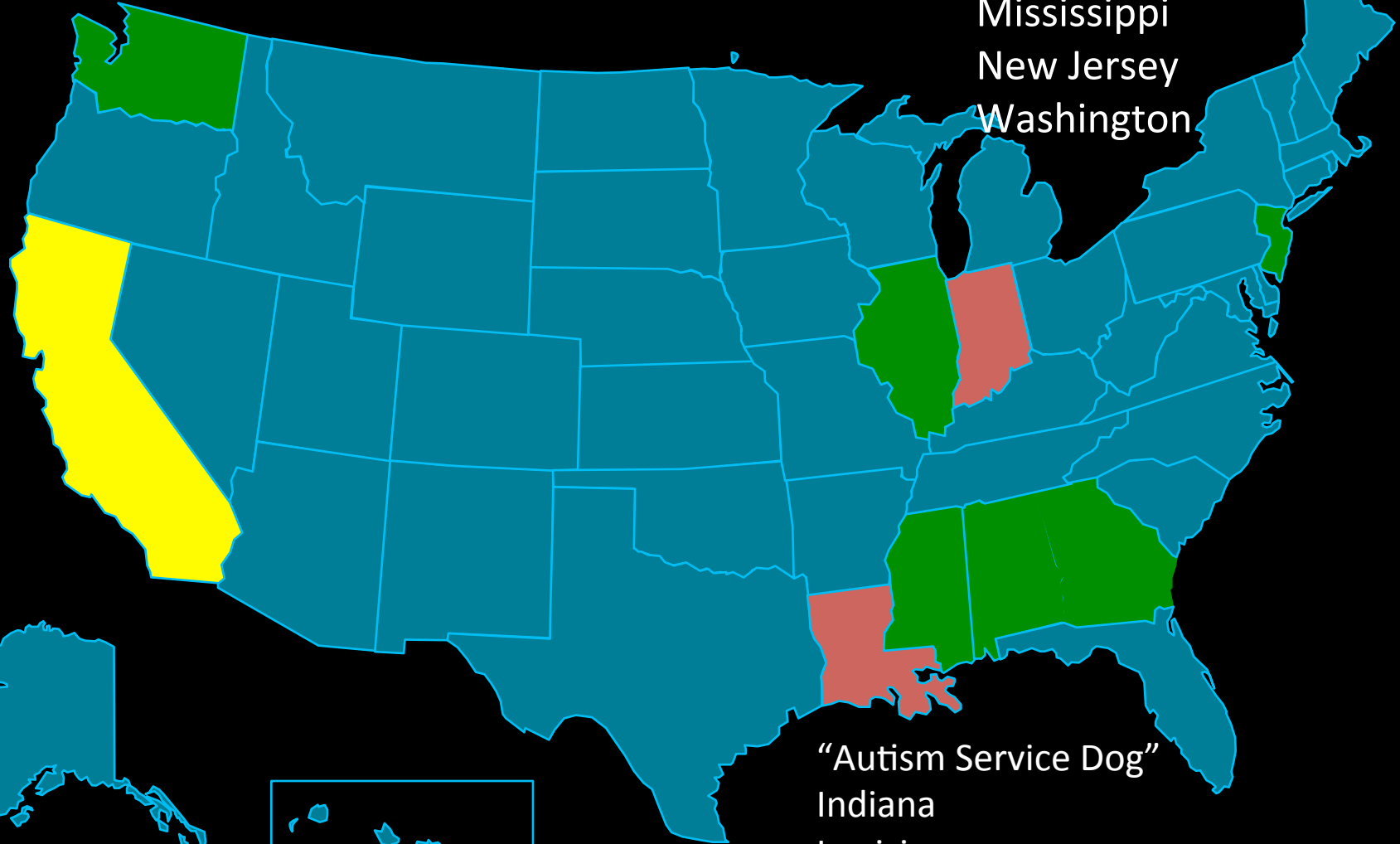
*Berardelli/Bardelli v. Allied Serv. Inst. of  
Rehabilitative Med.* (M.D. Pa. Apr. 2014)

*Riley v. Sch. Admin. Unit #23* (D.N.H. Apr. 2015)

*Child with Disability v. Sachem Cent. Sch. Dist.  
Bd. of Ed.* (E.D.N.Y. May 2015)

# State Laws of Interest

Alabama  
Georgia  
Illinois  
Mississippi  
New Jersey  
Washington



“Autism Service Dog”  
Indiana  
Louisiana

Alaska

Hawaii

# Applying General Access Provisions

## Example: Va. Code § 51.5-44

VIRGINIA DEPARTMENT OF EDUCATION GUIDELINES (Revised 2011)

“afforded each student a near absolute right to be accompanied by a service dog in a Virginia public school”

“provide a separate statutory right of the student to be accompanied by a service dog, thereby making IEP/504 team determinations unnecessary”

“still must be qualified and carefully weighed against the rights of other students who are equally entitled to receive educational benefits at the school”

# Illinois Law

Photo Credit: Daily Herald

Photo Credit: Illinois Times

Carter Kalbfleisch and Corbin

Kaleb Drew and Chewey

Ill. Comp. Stat. 5/14-6.02

“service animals . . . shall be permitted to accompany that student at all school functions, whether in or outside the classroom.”

Ill. Comp. Stat. 5/48-8 “autism service animal”



Policy and Ethical Issues

# THANK YOU

*Canines in the Classroom Revisited: Recent Developments Relating to Students' Utilization of Service Animals at Primary and Secondary Educational Institutions*, 9 Albany Gov't L. Rev. 1 (2016)

*Canines in the Classroom: Service Animals in Primary and Secondary Educational Institutions*, 4 J. of Animal L. & Ethics 11 (2011)

Articles can be downloaded from SSRN.com

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# Recent Education Cases

*Alboniga v. School Board of Broward Cnty. Fla.*, 87 F.Supp.3d 1319 (S.D. Fla. 2015)

*U.S. v. Gates-Chili Central Sch. Dist.*, 2016 WL 4036601 (W.D.N.Y. 2016)

*Bardelli/Berardlli v. Allied Services Inst. of Rehabilitative Medicine*, 3:14-cv-00691 (M.D. Penn. 2014)

*Riley v. School Admin Unit #23*, No. 1:15-cv-00152 (D.N.H. Apr. 2015)

*Child with Disability v. Sachem Cent. Sch. Dist. Board of Ed.*,  
No. 2:15-cv-02903 (E.D.N.Y. May 2015)

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# Citations to State Laws of Interest Relating to Service Animals in Schools

Alabama § 21-7-4

Georgia § 30-4-2(b)

Mississippi § 37-70342

New Jersey § 18A:46-13.2 *et. seq.*

Washington § 28A-642.010

California Education Code § 39839

Indiana § 16-32-3-1.5

Louisiana § 46:1952

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## Illinois Education Cases

*K.D. v. Villa Grove Cmty. Unit School District*, 936 N.E.2d 690 (Ill. App. 2010) (trial court order in favor of student affirmed)

*Kalbfleisch v. Columbia Cmty. Unit School District*, 920 N.E.2d 651 (Ill. App. 2009) (trial court's preliminary injunction in favor of student affirmed)