

**Issue/Holding:** When parents and their child are dissatisfied with the outcome of a due process hearing and seek review in US District Court, parents may represent themselves pro se as real parties in interest.

**Rule:** In general, a party may represent his or her own interests in federal court without the aid of counsel. 28 U.S.C. § 1654. There is no specific provision in IDEA mandating that parents are real parties in interest. However, a comprehensive reading of IDEA leads to the conclusion that parents have independent, enforceable rights that are not limited to certain procedural and reimbursement-related matters, but includes a right to FAPE for parents' children. The following parts of IDEA, when taken together, lead to the above stated conclusion:

- Goals of IDEA:
  - Ensuring that children with disabilities have FAPE.
  - Ensuring that, “the rights of children with disabilities and parents of such children are protected.” IDEA 20 U.S.C. §§1400(d)(1)(A)-(B).
- IDEA requires school districts to develop an IEP for a child with a disability §§1412(a)(4), 1414 (d).
  - Parents play a “significant role” in the IEP development process, *Schaffer v. Weast*, 546 U.S. 49, 53 (2005).
  - Parental concerns “for enhancing the education of a child” must be considered by the team. §1414(d)(3)(A)(ii)
- Cost recovery:
  - Court or hearing officer can require a state agency to reimburse parents for the cost of private school enrollment if it is found that the agency did not make FAPE available. §1412(a)(10)(C)(ii)
  - A certain provision allows reimbursement of attorney’s fees “to a prevailing party who is the parent of a child with a disability.” §1415(i)(3)(B)(i)(I)

**Facts/Application:** The parents of six year old Jacob, a child with autism spectrum disorder, worked with the school district to develop the IEP. The school district proposed an IEP that would have placed Jacob in a public elementary school. Jacob’s parents regarded this as deficient and filed a complaint alleging the district failed to provide Jacob with FAPE. The claim was rejected and parents appealed to a state-level review officer. Upon losing that appeal, they filed, on their own behalf and on behalf of Jacob, in the U.S. District Court for the Northern District of Ohio. Pending the resolution of these challenges, the parents enrolled Jacob in a private school at their own expense.

The district court found that the school district provided Jacob with FAPE. Parents, without counsel, filed an appeal with the Court of Appeals for the Sixth Circuit. Based on it’s decision in *Cavanaugh v. Cardinal Local School Dist.*, 409 F. 3d 753 (2005), the court of appeals entered an order dismissing the appeal unless the Winkelmanns obtained counsel to represent Jacob. *Cavanaugh* rejected the proposition that IDEA allows non-lawyer parents raising IDEA claims to proceed *pro se* in federal court.

The First Circuit Court of Appeals was in direct contradiction with the finding in *Cavanaugh*, when it concluded under a theory of statutory joint rights that IDEA accords parents the right to assert IDEA claims on their own behalf in *Maroni v. Pemi-Baker Regional School Dist.*, 346 F. 3d 247, 249, 250.

Certiorari was granted and the Supreme Court reasoned that since parents enjoy enforceable rights at the administrative stage, it would be inconsistent with the statutory scheme to bar them from continuing to assert these rights in federal court. Additionally, the text of IDEA does not expressly or implicitly bar parents from seeking these rights once the time comes to file a civil action. The statute’s reference to

parents' rights implies the conveyance of rights to parents as well as to children. The provisions in IDEA confirm that IDEA, through text and structure, creates in parents an independent stake not only in the procedures and costs implicated by this process but also in the substantive decisions to be made. Moreover, parents have the right to be present at an IEP, which defines FAPE for that parent's child. IDEA does not differentiate between the rights accorded to children and the rights accorded to parents. Because parents have independent rights over substantive matters, they can represent themselves in federal court.