Case No: 18-6522

In the Supreme Court of the United States

ROBERT R. PRUNTY,

PETITIONER,

VS.

THE SCHOOL DISTRICT OF DESOTO COUNTY FLORIDA, ET AL; THE AGENCY FOR HEALTHCARE ADMINISTRATION, (ACHA) ET AL & THE JACK NICKLAUS MIAMI CHILDREN'S HOSPITAL, ET AL,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS PANEL, CASE NO: 17:14891

RESPONDENT, THE SCHOOL DISTRICT OF DESOTO COUNTY FLORIDA'S BRIEF IN OPPOSITION

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STATEMENT OF FACTS

Petitioner, Robert Prunty, has filed numerous lawsuits over the last several years related to his claim that the DeSoto County School District, State of Florida and other parties have violated his right to be involved in his children's education. He has repeatedly alleged that he has not been properly included in the creation of his children's IEP contracts, or his consent has not been properly given, and therefore his constitutional rights have been violated. *See* Petition for Writ of Certiorari p. 13 to 15. In each of Prunty's lawsuits, United States District Courts have advised Prunty that he must first exhaust the administrative remedies made available to him through the I.D.E.A. process. App. at 1, 3, 4, 5, 6, 7, 8, 14, 15. The United States Court of Appeals for the Eleventh Circuit agreed with the Middle District on July 23, 2018, which is the reason for Petitioner's current petition. App. at 1. However, after receiving clear instructions from the courts, each time Prunty has failed to utilize the proper remedies. At one point in time, Prunty began the administrative remedy process, but abandoned it in favor of filling another lawsuit. Prunty is convinced that his constitutional rights are being violated and, therefore, he is entitled to circumvent the appropriate administrative process that was created to address the exact issue which he alleges he is facing.

Prunty has alleged that he was not involved in the creation of I.E.P. contracts for his children, that his concerns as a parent were ignored, and that the Respondents failed to obtain his parental consent. These are the exact circumstances for which the I.D.E.A. was created. Prunty's claims could not be raised by someone outside of the school, nor could they be brought by an adult within the school. Under this two-step analysis pursuant to *Fry v. Napoleon*, 137 S. Ct. 743 (2017), Prunty's claims are proven to relate to a free appropriate public education (FAPE) and are governed by the requirements set forth in the I.D.E.A.

The I.D.E.A. proscribes a specific process for seeking relief when educational issues arise. 20 U.S.C. §§ 1400. The Act allows parents to file suit in state or federal court. However, prior to filing suit, the parent is required to exhaust available administrative remedies. *Id.* See Also *J.P. v. Cherokee County Bd. Of Educ.*, 218 Fed. App'x 911, (11th Cir. 2007). Even if the Plaintiff seeks relief under another statute, the exhaustion requirements still apply. *Babicz v. Sch. Bd. Of Broward Cnty.*, 135 F. 3d 1420 (11th Cir. 1998). In a narrow set of circumstances, a parent may avoid exhausting administrative remedies, such as when the administrative process would be futile. *Assoc. for Retarded Citizens of Ala. V. Teague,* 830 F. 2d 158 (11th Cir. 1987). However, Prunty has not demonstrated that the process would be futile. Further, the administrative process in this case would be the most capable of providing a remedy to Prunty's concerns.

PROCEDURAL HISTORY

Petitioner's Petition for Writ of Certiorari arises from an Order entered on July 23, 2018 by the United States Court of Appeals for the Eleventh Circuit, Case Number: 17-14891-EE. The Eleventh Circuit Case was an appeal from the U.S. District Court for the Middle District of Florida, Fort Myers Division, Case Number 2:17-cv-291-FtM-99CM.

There have been multiple other lawsuits of the same or similar nature. *See:*

Robert R. Prunty, Jr., v. Johnson & Johnson Pharmaceuticals & Board of Directors, et. al., U.S. District Court for the Middle District of Florida, case number 2:15-cv-105-FtM-29DNF.

Robert R. Prunty, Jr., Representing minor children: R.R.P. III, J.B.I.P., J.R.P., M.R.P. and M.E.P., v. Kathleen Sibelius, et. al., U.S. District Court for the Middle District of Florida case number 2:14-cv-313-FtM-29CM.

Robert R. Prunty, Jr. v. United States Department of Education et al, U.S. District Court for the Middle District of Florida, case number 2:16-cv-577-FtM-99 CM terminated March 29, 2017.

RESPONDENT'S OPPOSITION

I. PETITIONER'S CLAIM IS AN I.D.E.A. ISSUE AND PETITIONER IS REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES

Petitioner's claims arise from alleged violations of 20 U.S.C. §§ 1400 and Florida Statute § 1003.57, "Individuals with Disabilities Education Act (I.D.E.A.)". One of the main purposes of I.D.E.A. is to "ensure that all children with disabilities have available to them a free appropriate public education (FAPE) . . . designed to meet their unique needs." 20 U.S.C. § 1400 (d)(1)(A). Another of the main purposes is to "ensure that the rights of children with disabilities and parents of such children are protected." 20 U.S.C. § 1400 (d)(1)(B). Prunty's claims are related to whether his children have received an education that meets their needs and whether his rights as a parent have been protected. His claims are the exact type of concerns that the I.D.E.A. was intended to address.

When determining whether the claim arises under I.D.E.A., one must look to the gravamen of the complaint. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017). This Court offered guidance in *Fry* in determining the gravamen of the complaint:

> One clue to the gravamen of a complaint can come from asking a pair of hypothetical questions. First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school? Second, could an adult at the school have pressed essentially the same grievance? . . . When the answer is no, then the complaint probably does concern a FAPE.

Id. at 747. Under the *Fry* analysis, we look to whether Prunty could have brought the same claim if the alleged conduct occurred at a public facility that was not a school. As his claim relates directly to the issuance of individualized education programs (IEPs), this conduct could not have occurred anywhere but a school. The answer to the first question is no. Second, we ask whether an adult at the school could have pressed essentially the same grievance. IEP plans are applicable to individuals of school age. 20 U.S.C. § 1414 ("'IEP' means a written statement for each child with a disability..."). Because IEPs are issued to children, an adult at the school could not press a grievance for the issuance of an IEP that does not meet their educational needs or that ignores their parent's wishes. The answer to the second part of the analysis is again, no. The gravamen of Prunty's claims relate to a free appropriate public education (FAPE), and are therefore included under I.D.E.A.

As Petitioner has been repeatedly instructed by the Respondents and multiple court decisions, he is required to exhaust administrative remedies prior to filing suit. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) ("If a suit is brought under such a law 'seeks relief that is also available under' the IDEA, the plaintiff must first exhaust the IDEA's administrative procedures"). A parent who wishes to challenge an IEP, or any matter relating to the provision of a free access to public education (FAPE) may request an "impartial due process hearing" before an administrative law judge. 20 U.S.C. § 1415(f); *J.P. v. Cherokee County Bd. Of Educ.*, 218 Fed. App'x 911, (11th Cir. 2007). After an administrative hearing

has occurred, a party may challenge the administrative proceedings in state or federal court. "However, the I.D.E.A. requires that a plaintiff first exhaust administrative remedies" before filing in state or federal court. *Id (emphasis added).* Prunty must do as told three times prior by the U.S. District Courts of Florida and now the United States Court of Appeals for the Eleventh Circuit – he must exhaust the administrative remedies available to him before he may proceed with this litigation.

II. PETITIONER'S REQUEST FOR CERTIORARI RELIEF IS FRIVOLOUS AND CONSTITUTES HARASSMENT OF THE RESPONDENT

Petitioner has been advised three times by U.S. District Courts of Florida, and now once by the United States Court of Appeals for the Eleventh Circuit, that he must first exhaust administrative remedies before he is permitted to file suit. Additionally, the black letter law is clear. 20 U.S.C. § 1415(f) outlines the entire process for the Petitioner to follow. Despite the clarity provided in the law and through the court systems, Prunty insists on proceeding with truly inefficient and wasteful litigation. From the time when Petitioner states he first noticed an alleged issue with his children's I.E.P.s in 2011 to the current date, Prunty's children have presumably progressed seven years in school. It is incomprehensible that rather than addressing the issue in the manner proscribed in 20 U.S.C. § 1415(f), or even attempting to move forward in that manner, Prunty has filed repeated litigation to argue the same issue. Respondent has incurred years of attorneys' fees and costs due to Prunty's unwillingness to avail himself to the law.

Not only does Prunty willfully ignore the black letter law of which he has been instructed on multiple occasions, he also uses the various judicial venues to raise wild allegations regarding the integrity of the Respondent, counsel for the Respondent, and the courts themselves. Further, Petitioner raises wholly unfounded and misplaced arguments of constitutional violations. Petitioner believes that because the United States District Court for the Eleventh Circuit rephrased the *Fry* analysis, this somehow amounts to a First Amendment freedom of speech violation. The First Amendment applies to the spoken word, the written word, and expressive conduct. *Tex. V. Johnson,* 491 U.S. 397 (1989). A judicial opinion does not constitute "speech" for the purposes of the First Amendment. Petitioner has also raised allegations of violations of the Fourteenth Amendment's equal protection. Prunty's claims do not relate to equal protection, as he himself has acknowledged that I.D.E.A. and the Florida educational statutes relate to "not only all African American parents/persons, but all other races." App. at 32, 48. Petitioner's Petition for Writ of Certiorari is filed in in direct contradiction of multiple court rulings and black letter law and raises wholly unfounded claims of constitutional violations. Instead of requesting relief through the proper, available channels and seeking assistance for his children, Prunty chose to pursue years of futile litigation. Prunty knew or should have known that filing this Petition for Writ of Certiorari was improper and unlikely to succeed. Prunty acted in a manner so as to cause annoyance, harassment, and disturbance to the Respondent. Therefore, the filing is frivolous.

III. PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* SHOULD BE DENIED DUE TO FRIVOLOUS FILING

As stated in section II above, Prunty's lawsuit(s) and subsequent appeals are frivolous, inefficient, wasteful, and constitute harassment of the Respondent. This Court's Rule 39(8) states: If satisfied that a petition for writ of certiorari . . . is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis*. Respondent, The School Board of Desoto County Florida, respectfully requests that because Petitioner filed a frivolous Petition for Writ of Certiorari, his Motion for Leave to Proceed *in Forma Pauperis* be denied and that Petitioner should be required to pay the appropriate docket fee.

IV. RESPONDENTS SHOULD BE AWARDED DAMAGES AND COSTS FOR FRIVOLOUS FILING

This Court's Rule 42(2) states: when a petition for a writ of certiorari . . . is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel. For the reasons stated in Section II above, this is a frivolous lawsuit, a waste of judicial resources, and an exhaustion of the economic resources of the Respondents. Accordingly, Respondent requests that this Honorable Court award just damages of attorneys' fees to respond to the Petition for Writ of Certiorari and the costs associated with same.

CONCLUSION

Petitioner alleges that he was not involved in the creation of I.E.P. contracts for his children, that his concerns as a parent were ignored, and that the Respondents failed to obtain his parental consent. These types of allegations fall under the I.D.E.A. and require a plaintiff to exhaust administrative remedies before filing suit. Despite being advised of such by both the black letter law and now multiple United States District Courts, Petitioner insists on proceeding further in the court system. Not only should his Petition for Certiorari be denied, he should also be subject to sanctions for filing a frivolous petition.

Respectfully submitted,

JEFFREY D. JENSEN, ESQUIRE

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief in Opposition meets the word-limit requirements as set forth by the Rules of the Supreme Court of the United States.

JEFFREY D. JENSEN, ESQUIRE

CORPORATE DISCLOSURE STATEMENT

Rule 29(6) requiring a corporate disclosure statement is inapplicable to this Respondent, as the School Board of Desoto County, Florida is a governmental entity.

CERTIFICATE OF SERVICE

I hereby certify that the Brief in Opposition was sent via U.S. Mail to the following parties on the 29 day of November, 2018.

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APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14891-EE

ROBERT R. PRUNTY, JR.,

Plaintiff - Appellant,

versus

DESOTO COUNTY SCHOOL BOARD AND DISTRICT,
KARYN E. GARY,
Dr., former superintendent,
ANGELA STALEY,
Dr., ESE Director,
AGENCY FOR HEALTHCARE ADMINISTRATION,
AHCA,
SHEVAUN HARRIS,
Asst. Deputy Secretary, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

BEFORE: ED CARNES, Chief Judge, MARTIN, and JILL PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by the Appellant is DENIED.

ENTERED FOR THE COURT:

CHIEF JUDGE

ORD-41

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERT R. PRUNTY,

Plaintiff,

v. Case No: 2:17-cv-291-FtM-99CM

AGENCY FOR HEALTHCARE ADMINISTRATION, ELIZABETH DUDEK, Director, THE JACK NICKLAUS MIAMI CHILDREN'S HOSPITAL, THE SCHOOL DISTRICT OF DESOTO COUNTY & BOARD OF DIRECTORS, and ALEX SOTO, & Board of Directors,

Defendants.

OPINION AND ORDER

This matter comes before the Court on defendants' Motions to Dismiss Plaintiff's Amended Complaint (Docs. ## 27, 28, 39), and plaintiff *pro se* Robert R. Prunty's Responses (Docs. ## 35, 43, 44). For the reasons set forth below, the motions are granted.

I.

Plaintiff Robert R. Prunty (plaintiff or Prunty), who is African-American, is currently proceeding on a twelve-count First Amended Complaint (Doc. #25) alleging violations of his civil and constitutional rights because defendants denied him the benefits of federal programs and the right to be involved in the formation of Individualized Education Program contracts (IEPs) for his children who have been diagnosed with Autism. Prunty alleges that

defendants' unconstitutional practices are not being applied to Caucasian parents. (Id. at § 13.) He claims violations of his "fundamental constitutional rights," 42 U.S.C. § 1985(3), and 42 U.S.C. § 1983[1], as well as common law claims for invasion of privacy and intentional infliction of emotional distress. Plaintiff seeks to enjoin defendants from following Florida Statute § 1003.57 and Florida Department of Education Rule 6A-6.034111 et seq. because the statute and rule are unconstitutional and deny plaintiff's parental rights to be involved in the IEP process under the Individuals with Disabilities Education Act's (IDEA) procedural rules, and discriminate against plaintiff based on his race. (Id. at ¶¶ 12-13.)

II.

Once again, the Court notes as an initial matter that this is not the first case Prunty has filed alleging similar violations of his civil and constitutional rights based upon similar conduct against many of the same defendants. See Prunty v. Sibelius et al., No. 2:14-cv-313; Prunty v. Johnson & Johnson et al., No. 2:15-cv-105; and Prunty v. DeSoto Cnty. Sch. Dist. et al., No. 2:16-cv-577. In these cases, the Court dismissed plaintiff's complaint

[1] Plaintiff alleges that his First, Fifth, Thirteenth, and Fourteenth Amendment right to control the care, custody, upbringing, and education of his children has been denied because defendants have precluded him from participating in the IEP process for his children. (Doc. #25, ¶ 23(a).)

without prejudice for failure to exhaust the IDEA's administrative remedies. See Prunty v. Sibelius et al., 2014 WL 7066430, at 3 (M.D. Fla. Dec. 12, 2014); Prunty v. Johnson & Johnson, Inc. et al., 2015 WL 2019411 (M.D. Fla. May 1, 2015); Prunty v. DeSoto Cnty. Sch. Dist. et al., 2017 WL 435696 (M.D. Fla. Feb. 1, 2017). In Johnson & Johnson, the Court stated: "Thus, the Court emphasizes that the dismissal here is not premised upon a 'technicality' that Prunty may avoid via refiling or further amendment. Any future cases concerning the School Board's actions in connection with Prunty's children's IEPs will be subject to summary dismissal unless Prunty alleges that he has fully exhausted the IDEA's administrative remedies." Id. at *3. In DeSoto Cnty. Sch. Dist., the Court stated:

> Assuming the allegations in the First Amended Complaint are true, Prunty may have a viable IDEA claim. However, Prunty cannot assert that claim (whether characterized as a violation of the IDEA, Title VI, Section 1981, Section 1983, or any other statutory or constitutional provision), unless and until he participates in and completes the IDEA's administrative dispute resolution procedures.

2017 WL 435696, at *2.

Defendants move to dismiss, in part, on this basis that the Amended Complaint fails to exhaust IDEA's administrative remedies and should otherwise be dismissed as duplicative of Prunty v. DeSoto Cnty. Sch. Dist. et al., No. 2:16-cv-577. Plaintiff

responds that exhaustion is not required for claims brought pursuant to 42 U.S.C. § 1983.

III.

If a student is covered by the IDEA, school officials are required to create an IEP for that student to facilitate their academic progress. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 519 (2007). Students with Autism, such as Prunty's children, are covered by the IDEA. Id. As a parent, Prunty has the statutory right to contribute to the IEP process. Id. According to Prunty, defendants deprived him of that right. See, e.g., Doc. #25, ¶¶ 7, 15-19. Parents of covered children are "entitled to prosecute IDEA claims on their own behalf." Winkelman, 550 U.S. at 535. However, before filing a civil action for a violation of the IDEA, a plaintiff must first exhaust all available administrative remedies, including a meeting with school officials and a hearing before an Administrative Law Judge. J.P. v. Cherokee Cnty. Bd. of Educ., 218 F. App'x 911, 913 (11th Cir. 2007) ("The philosophy of the IDEA is that plaintiffs are required to utilize the elaborate administrative scheme established by the IDEA before resorting to the courts to challenge the actions of the local school authorities."). The IDEA's broad complaint provision affords the "opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational

placement of the child, or the provision of a free appropriate public education [FAPE] to such child." 20 U.S.C. § 1415(b)(6).

The IDEA's exhaustion requirements apply even if a plaintiff seeks relief via a different statute. Babicz v. Sch. Bd. of Broward Cnty., 135 F.3d 1420, 1422 n.10 (11th Cir. 1998) ("[A]ny student who wants relief that is available under the IDEA must use the IDEA's administrative system even if he invokes a different statute."). "[T]he exhaustion of administrative process is not required where resort to those remedies would be futile or inadequate. For example, courts have not required exhaustion of administrative remedies when the administrative procedure is incapable of granting the relief requested." Assoc. for Retarded Citizens of Ala. v. Teague, 830 F.2d 158, 160 (11th Cir. 1987) (citations omitted).

The Court notes plaintiff's argument that the United States Supreme Court has held that the exhaustion of state administrative remedies is not required as a prerequisite to bring an action pursuant to Section 1983. See Patsy v. Bd. of Regents of State of Fla., 457 U.S. 496, 516 (1982). Yet the Eleventh Circuit has found that a parent may not proceed with a Section 1983 claim for violations of the IDEA without first exhausting administrative remedies afforded by the IDEA if the parent is requesting relief that the administrative authorities could grant. N.B. by D.G. v. Alachua Cnty. Sch. Bd., 84 F.3d 1376, 1379 (11th Cir. 1996); M.T.V.

v. DeKalb Cnty. Sch. Dist., 446 F.3d 1153, (11th Cir. 2006) (finding that parent must first exhaust administrative remedies before seeking relief for violations of the ADA, Section 504, the IDEA, the First Amendment, and Section 1983).

Here, plaintiff's Amended Complaint demonstrates that the relief sought is a vindication of Prunty's right to be involved in the IEP process for his children under IDEA, and Prunty continually references that defendants' actions are in violation of the statue throughout his Amended Complaint.[2] See Doc. #25, ¶¶ 2, 4, 7, 16, 19, 28, 31, 37, 43, 52, 58, 59, 61, 67, 73, 83, 90, 103. Although Prunty argues that he is challenging the constitutionality of Florida Statute § 1003.57 regarding exceptional student instruction, in reality he is claiming that the defendants did not follow the procedures as set forth in the statute, in contravention of the IDEA. This is exactly why the IDEA's administrative process is in place. See N.B., 84 F.3d at 1379 (exhaustion requirement in place to prevent deliberate disregard and circumvention of agency procedures established by Congress).

As the Court has previously noted, before Prunty may assert a claim (whether characterized as a violation of the IDEA, Title

[2] And there is otherwise no indication that plaintiff has exhausted his administrative remedies since the Court's dismissal of his 2016 case, nor that the administrative process is incapable of granting plaintiff the requested relief such that plaintiff may bypass the administrative process.

VI, Section 1981, Section 1983, or any other statutory or constitutional provision), unless and until he *participates in and completes* the IDEA's administrative dispute resolution procedures. See Babicz v. Sch. Bd. of Broward Cnty., 135 F.3d 1420, 1422 n.10 (11th Cir. 1998) ("[A]ny student who wants relief that is available under the IDEA must use the IDEA's administrative system even if he invokes a different statute.").

Therefore, the First Amended Complaint is dismissed without prejudice to refiling following exhaustion of the IDEA's administrative procedures.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Defendants' Motion to Dismiss Amended Complaint (Docs. ## 27, 28, 39) are **GRANTED** and the First Amended Complaint (Doc. #25) is **dismissed without prejudice.**

2. The Clerk shall terminate all pending motions and deadlines as moot, and close the file.

DONE and ORDERED at Fort Myers, Florida, this 22nd day of September, 2017.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Plaintiff
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERT R. PRUNTY, JR.,

Plaintiff,

v. Case No: 2:16-cv-577-FtM-99CM

UNITED STATES DEPARTMENT OF EDUCATION, THE DESOTO COUNTY SCHOOL DISTRICT, THE JACK NICKLAUS MIAMI CHILDREN'S HOSPITAL, INC., KARYN E. GARY, FLORIDA DEPARTMENT OF EDUCATION, THE FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, ELIZABETH DUDEK, PAMELA STEWART, ALEX SOTO, and JOHN KING,

Defendants.

OPINION AND ORDER

This matter comes before the Court on pro se plaintiff Robert J. Prunty, Jr.'s (plaintiff or Prunty) Motion for Reconsideration Pursuant to Federal Rules 56 and 60 due to Newly Discovered Evidence, Fraud Upon the Court, and Need to Prevent Manifest Injustice (Doc. #107) filed on February 13, 2017. Defendant DeSoto County School District filed a response in opposition (Doc. #108) on February 17, 2017. On February 23, 2017, this Court granted other defendants an extension of time to respond and requested that defendants address what implications, if any, Fry v. Napoleon Community Schools, 137 S. Ct. 743 (2017) has on whether

reconsideration of the Court's February 1, 2017 Opinion and Order dismissing plaintiff's First Amended Complaint for failure to exhaust administrative remedies under the Individuals with Disabilities Education Act (IDEA) (Doc. #106), is warranted. (Doc. #112.) The Court also allowed plaintiff the opportunity file a reply. (Id.)

Having reviewed defendant Florida Medicaid's response (Doc. #113), and plaintiff's motions, which the Court construes as replies to defendants' responses (Docs. ##111, 119, 121), the Court denies the request for reconsideration.

I.

A non-final order may be revised at any time before the entry of a final judgment. Fed. R. Civ. P. 54(b). The decision to grant a motion for reconsideration is within the sound discretion of the trial court and may be granted to correct an abuse of discretion. Region 8 Forest Serv. Timber Purchasers Council v. Alcock, 993 F.2d 800, 806 (11th Cir. 1993). "The courts have delineated three major grounds justifying reconsideration of such a decision: (1) an intervening change in controlling law; (2) the availability of new evidence; (3) the need to correct clear error or prevent manifest injustice." Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). Furthermore, the Court has the inherent power to assess sanctions for a party's bad-faith conduct, including setting aside judgments for fraud on

the court and imposing attorney fees and costs, independent of statutory or rule provisions. Chambers v. NASCO, Inc., 501 U.S. 32, 44-50 (1991). According to plaintiff, reconsideration is warranted because of newly discovered evidence, the need to prevent manifest injustice due to defendants' fraud on the court, and an intervening change in the law.

II.

A. Fraud on the Court

Fraud on the court is defined as "embracing only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct." Securities & Exchange Commission v. ESM Group, Inc., 835 F.2d 270, 273 (11th Cir. 1988) (citing Travelers Indemnity Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)).

Plaintiff first argues that defendants falsely claimed in their motions to dismiss that plaintiff failed to exhaust his administrative remedies under the IDEA when exhaustion is not required. This is not fraud on the court, this is advocacy, albeit a position that plaintiff does not agree with. The Court addressed exhaustion in its Opinion and Order on defendants' motions to dismiss, and found that based on the allegations in plaintiff's

First Amended Complaint (Doc. #43) exhaustion of the IDEA's administrative procedures is required. There is no basis for reconsideration.

Second, as further support for fraud on the court, plaintiff raises the statute of limitations for the first time. Plaintiff argues that when he re-filed this action on May 6, 2016 (Doc. #1), he did it "with full knowledge that the IDEA statute of limitations had expired on March 3, 2016." (Doc. #107, ¶¶ 7, 9.) Plaintiff states that defendants intentionally failed to mention the expired statute of limitations to the Court because they knew that his case did not seek relief under the IDEA. (Id. at ¶ 11; Doc. #111, ¶ 13.) Despite knowing that relief was not being sought under the IDEA, defendants moved to dismiss on this basis anyway. (Id.) Defendants responds that this accusation is false and the newly-proclaimed argument was not apparent on the face of the Complaint. (Doc. #1). Defendants state that they could not have committed fraud by not correcting plaintiff's own error for him.

The Court finds no fraud on the court. Rather, this is simply another attempt by plaintiff to reargue his position that he does not seek relief under the IDEA and is exempt from the exhaustion requirement. The Court has found that plaintiff's Amended Complaint clearly does seek such relief (Doc. #106 at n.1), and that has not changed. In fact, plaintiff continues to invoke the IDEA in his motion for reconsideration, stating that "it is only

plaintiff who claimed he himself never received IDEA procedural safeguards."[1] (Doc. #107, ¶ 14; Doc. #121, ¶¶ 6, 9.)

B. Intervening Change in Controlling Law

In support of his argument for an intervening change in controlling law, plaintiff cites the Sixth Circuit's decision in Fry v. Napoleon Community Schools, 788 F.3d 622 (6th Cir. 2015), and particularly its dissenting opinion, which states: "Non-IDEA claims that do not seek relief available under the IDEA are not subject to the exhaustion requirement." Fry, 788 F.3d at 635; Doc. #107 at 16-17. The Sixth Circuit's opinion was issued prior to the Court's Opinion and Order dismissing the First Amended Complaint (Doc. #106), and the Supreme Court had not yet issued its opinion at that time.[2]

In Fry, the Supreme Court vacated the Sixth Circuit's decision, finding that exhaustion under the IDEA is required when a lawsuit challenges the denial of a Free Appropriate Public Education (FAPE), and that a plaintiff cannot escape the exhaustion requirement "merely by bringing her suit under a statute other than the IDEA." 137 S. Ct. at 754. "[If] the remedy sought is

[1] As noted by the Court in its Opinion and Order on dismissal, parents of covered children are "entitled to prosecute IDEA claims on their own behalf." (Doc. #106, citing Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 535 (2007)).

[2] The United States Supreme Court reversed and remanded the Sixth Circuit's decision on February 22, 2017.

not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required. After all, the plaintiff could not get any relief from those procedures." Id. The Supreme Court noted that even if a complaint is not framed or phrased to precisely allege a school's failure to provide FAPE, the gravamen of the complaint is what matters; otherwise, a plaintiff could evade the IDEA's restrictions through artful pleading. Id. at 755. Moreover, the Supreme Court stated: "A further sign that the gravamen of a suit is the denial of a FAPE can emerge from the history of the proceedings. In particular, a court may consider that a plaintiff has previously invoked the IDEA's formal procedures to handle the dispute – thus starting to exhaust the Act's remedies before switching midstream." Id. at 757.

Here, Fry is not an intervening change in the law that warrants reconsideration. Instead, it is an affirmation of the approach taken in the Court's prior Opinion and Order (Doc. #106).

Plaintiff argues that the dismissal should be vacated because he is not seeking relief under the IDEA, citing Fry (Doc. #107, ¶¶ 7, 16, 19, 22, 25-60), yet he clearly is. As previously noted by the Court, the gravamen of plaintiff's Amended Complaint involves the denial of a FAPE, and seeks relief under the IDEA as plaintiff alleges that defendants denied him the benefits of federal programs and the right to make and enforce Individualized Education Program contracts (IEPs) for his five children who have been diagnosed

with Autism. Plaintiff states that the "action is based upon damages to Plaintiff personally under Title VI, IDEA and 42 U.S.C. § 1983, respectively." (Doc. #43, ¶ 1; Doc. #106, n. 1 and p. 4, citing Babicz v. Sch. Bd. of Broward Cnty., 135 F.3d 1420, 1422 n.10 (11th Cir. 1998) ("[A]ny student who wants relief that is available under the IDEA must use the IDEA's administrative system even if he invokes a different statute.")) Furthermore, the Court noted in its Opinion and Order that plaintiff previously invoked the IDEA's administrative remedies, but abandoned them because plaintiff believed that the Administrative Law Judge was biased and had set his case in "legal limbo" to cause delay of the proceedings. (Doc. #43, ¶ 20.) As the Supreme Court in Fry stated, this is a sign that the gravamen of a complaint is the denial of a FAPE, requiring exhaustion. Fry, 136 S. Ct. at 757. Therefore, reconsideration on the basis of an intervening change in the law is denied.

C. Newly Discovered Evidence

Plaintiff has cited no newly discovered evidence that was not before the Court when it ruled on the motions to dismiss. Therefore, reconsideration on this basis is denied.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiff's Motion for Reconsideration due to Newly Discovered Evidence, Fraud Upon the Court, and Need to Prevent Manifest Injustice (Doc. #107) is **DENIED.**

2. Plaintiff's Omnibus Motion in Opposition to the School District of DeSoto County's Constant Vexatious Filings (Doc. #111) is **DENIED.**

3. Plaintiff's Motion and Notice to Defendant School District of DeSoto County Invoking Contempt of Court due to Intentional Violation of Court Orders Regarding Fry v. Napoleon (Doc. #119) is **DENIED.**

4. Plaintiff's Direct Opposition to the School District of DeSoto County's Further Cumulative and Vexatious Filings (Doc. #121) is **DENIED.**

5. AHCA's Motion to Strike Plaintiff's Unauthorized Reply (Doc. #122) is **DENIED as moot.**

6. The Clerk is directed to enter judgment dismissing this case without prejudice in accordance with this Court's February 1, 2017 Order (Doc. #106).

DONE and ORDERED at Fort Myers, Florida, this 29th day of March, 2017.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Plaintiff
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 14-CV-20834-WILLIAMS

ROBERT R. PRUNTY, JR.,
as Next Friend of minor children
R.R.P. III, M.R.P., J.R.P., J.B.I.P.,
M.E.P.,

Plaintiffs,

vs.

KATHLEEN SIBELIUS, Secretary,
U.S. Department of Health and Human
Services; JOHNSON & JOHNSON
PHARMACEUTICALS, c/o ALEX GORSKY;
COASTAL BEHAVIORIAL HEALTHCARE,
INC., c/o JACK MINGE; JANSSEN
PHARMACEUTICALS; c/o
TOM HEYMAN; BRISTOL-MYERS
SQUIBB, c/o JAMES M. CORNELIUS;
FLORIDA MEDICAID DEPARTMENT, c/o
JUSTIN SENIOR and KAREN BROOKS;
DESOTO COUNTY SCHOOL BOARD, c/o
DR. KARYN E. GARY; WEST
ELEMENTARY SCHOOL, c/o PHYLLIS
CLEMONS; MEMORIAL ELEMENTARY
SCHOOL, c/o DALE WOLGAST;
PROVIDENCE SERVICE CORP., d/b/a
FAMILY PRESERVATION SERVICES,
c/o WARREN S. RUSTAND and
DR. KINSHUK BOSE,

Defendants.

_____/

OMNIBUS ORDER

THIS MATTER is before the Court on the following motions:

1. Defendant Karyn E. Gary's Motion to Dismiss the Amended Complaint [D.E. 16].

2. Defendants Justin Senior and Karen Brooks' Motion to Dismiss the Amended Complaint [D.E. 28].
3. Defendants Phyllis Clemons and Dale Wolgast's Motion to Dismiss the Amended Complaint [D.E. 22].
4. Defendants Coastal Behavioral Healthcare, Inc., Jack Minge and Dr. Ernesto Matos-Gonzalez's Motion to Dismiss the Amended Complaint [D.E. 23].
5. Defendants Gary, Clemons and Wolgast's Motion to Compel Plaintiff to Serve Defendants' Counsel with Case-Related Papers [D.E. 26].
6. Plaintiff's Motion for a More Definite Statement from Coastal Healthcare [D.E. 25].
7. Plaintiff's Motion for Partial Summary Judgment [D.E. 29].
8. Plaintiff's Motions to Strike Defendants' Motions to Dismiss [D.E. 39 and D.E. 40].

In his Amended Complaint [D.E. 15], Plaintiff attempts to allege claims against multiple individual, corporate and government defendants under the Civil Rights Act, the Individuals with Disabilities Education Act, the Rehabilitation Act, Florida's Deceptive and Unfair Trade Practices Act, and the Thirteenth Amendment of the Constitution of the United States, in addition to a negligence claim. *Id.* Though it is not entirely clear from the Amended Complaint, Plaintiff's allegations appear to focus on the quality of the services provided to his disabled children in the school system of DeSoto County, Florida. *Id.* Plaintiff also complains that certain pharmaceutical companies used deceptive labeling on drugs used by his children. *Id.* In response, several defendants

have filed motions to dismiss the Amended Complaint on the grounds that Plaintiff's Amended Complaint does not meet the pleading standards of Fed. R. Civ. P. 8(a).

Upon reviewing the Amended Complaint, the Court finds that it does not comply with Rule 8 of the Federal Rules of Civil Procedure and therefore must be dismissed as an impermissible shotgun pleading that fails to give notice to defendants of the specific claims against them. *See Abele v. Tolbert*, 130 F.App'x 342, 343 (11th Cir. 2005) (applying relaxed pleading standard to *pro se* litigants). Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim" showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2).

A "shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions." *Strategic Income Fund, LLC. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002). Such pleadings make it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. College*, 77 F.3d 364, 366 (11th Cir. 1996). Therefore, "shotgun pleadings are routinely condemned by the Eleventh Circuit." *Real Estate Mortg. Network, Inc. v. Cadrecha*, No. 8:11–cv–474–T–30AEP, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011) (citing *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991)); *see also Davis v. Coca–Cola Bottling Co.*, 516 F.3d 955, 979 n.54 (11th Cir. 2008) ("[S]ince 1985 we have explicitly condemned shotgun pleadings upward of fifty times."); *Strategic Income Fund*, 305 F.3d at 1295 n.9 ("This court has addressed the topic of shotgun pleadings on numerous occasions in the past, often at great length and always

with great dismay."); *Byrne v. Nezhat*, 261 F.3d 1075, 1131 (11th Cir. 2001) ("Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice.").

In Plaintiff's complaint, each count incorporates the allegations of all the preceding paragraphs and counts without indicating which facts relate particularly to which counts. The complaint is therefore deficient under Federal Rule of Civil Procedure 8(a), even construing it most liberally. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998); *Olsen v. Lane*, 832 F. Supp. 1525, 1527 (M.D. Fla. 1993) ("[T]he *pro se* litigant must still meet minimal pleading standards.").

For these reasons, the Court ORDERS the following:

1. Defendants' Motions to Dismiss the Amended Complaint [D.E. 16; D.E. 22; D.E. 23; D.E. 28] are GRANTED.
2. Plaintiff shall be given one more opportunity to amend his Complaint. Plaintiff shall separate his claims into counts, with appropriate headings indicating the cause of action and identifying the specific defendant or defendants against whom the claim is brought. *See Greif v. Jupiter Med. Ctr., Inc.*, No. 08-80070-CIV, 2008 WL 2705436, at *4 (S.D. Fla. July 9, 2008); FED. R. CIV. P. 10(b). The Court further directs that below each heading, Plaintiff shall assert, expressly or inferentially, the elements applicable to that cause of action, the facts giving rise to the claim, and any relevant statutes. Plaintiff shall number the paragraphs of his complaint. *See* FED. R. CIV. P. 10(b).
3. In addition, Plaintiff's Second Amended Complaint must also address why the proper venue for this action is the Southern District of Florida, not the Middle

District of Florida [see D.E. 16 ¶¶ 4-5; D.E. 22 ¶ 4; D.E. 23 ¶¶ 6-7; D.E. 28 at 13-14].

4. Plaintiff shall file his Second Amended Complaint by May 12, 2014. Failure to comply with the Court's Order shall result in dismissal of this case.
5. Defendants Gary, Clemons and Wolgast's Motion to Compel Plaintiff to Serve Defendants' Counsel with Case-Related Papers [D.E. 26] is DENIED AS MOOT.
6. Plaintiff's Motions [D.E. 29; D.E. 39; D.E. 40] are DENIED AS MOOT.

DONE AND ORDERED in Chambers in Miami, Florida, this 28th day of April, 2014.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record

Robert R. Prunty, Jr., *pro se*
427 West Hickory Street
Arcadia, FL 34266

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE 17-14891

CASE NO: 2:17-cv-291-FtM-99CM

ROBERT R. PRUNTY
427 West Hickory Street
Arcadia, Florida 34266

Appellant,

V.

THE SCHOOL DISTRICT OF DESOTO COUNTY, FLORIDA(SDDCF) & BOARD OF DIRECTORS; THE AGENCY FOR HEALTH CARER ADMINISTRATION, (AHCA), MR. JUSTIN SENIOR & MS. ELIZABETH DUDEK, DIRECTOR(S) AND BOARD OF DIRECTORS & THE JACK NICKLAUS MIAMI CHILDREN'S HOSPITAL, (JNMCH), AND MR. ALEX SOTO, CHAIRMAN AND BOARD OF DIRECTORS

Appellees,

_____/

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

THE HONORABLE JOHN E. STEELE

INITIAL BRIEF OF APPELLANT ROBERT R. PRUNTY

CERTIFICATE OF INTERESTED PERSONS

Appellant/Plaintiff Robert R. Prunty, Case No. 17-14891
Pursuant to 11th Cir. Rule 26.1-1, Appellant Robert R. Prunty furnishes a complete list of the following:

1.) Mr. Robert R. Prunty
2.) Mrs. India L. Prunty
3.) All other Parents of Desoto County, Florida and the entire State of Florida who were ignored by similar policies of (SDDCF) and (AHCA)
3.) The School District of Desoto County, Florida & Board of Directors,(SDDCF)
4.) Attorneys for the (SDDCF), Mr. Jeffrey Jensen, of Unice, Salzman & Jensen
5.) The Agency for Health Care Administration, (AHCA) & Mr. Justin Senior, Ms. Elizabeth Dudek, Directors and Board of Directors
6.) Attorneys for (AHCA), Ms. Anne McDonough, Office of the United States Attorney General
7.) The Honorable Pam Bondi, Attorney General for the State of Florida
8.) The Jack Nicklaus Miami Children's Hospital (JNMCH) and Mr. Alex Soto, Chairman and Board of Directors
9.) Attorneys for the (JNMCH), Mr. Glen Falk, of Falk, Waas, Cortina & Hernandez
10.) The Honorable United States District Judge John E. Steele
11.) The Honorable United States Magistrate Judge Carol Miranda

CORPORATE DISCLOSURE STATEMENT

Appellant is not a corporation and has no such corporate interests to disclose.

STATEMENT REGARDING ORAL ARGUMENT

This case presents important Constitutional issues relating to Florida's ability to protect the Rights of Parents to decide the Educational Destinies of their Children

without State Statutes and Rules that support Policies of Intervention and Total Exclusion of Parents, that contradicts the Rule of Law and Human Decency.

Appellant, Robert R. Prunty, is a Florida Parent who has first-hand knowledge of such Statutes, Rules and Policies, and hereby respectfully requests Oral Argument of this Appeal, which Appellant believes would further assist this Honorable Court in determination of these issues.

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Constitutional Law

Acts

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STATEMENT OF JURISDICTION

Appellant, Robert R. Prunty instituted this action pursuant to *42 U.S.C. 1983,* alleging violations of Rights under the United States Constitution. The District Court had Jurisdiction under *28 U.S.C. 1331.* The District Court subsequently Ordered that Appellant/Plaintiff must first Exhaust all State Administrative Remedies before proceeding to Court on the Facial Constitutional Challenges of Florida Statutes. *(See: Court's order at Doc.(s) 65 & 81).*

Pursuant to *28 U.S.C. 1291*, this Honorable Court has Jurisdiction to consider the Appeal of that Order, the Order denying Plaintiff relief under *Fed. R. Of Civ. P. Rule 59(a).* Therefore, the District Court entered it's Final Orders rejecting the

Complaint, on 9-22-17 and ultimately rejecting Appellants timely filed *FRCP Rule 59 Motion* on 10-17-17. Appellant timely filed it's Notice of Appeal.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Starting in late 2011, when Appellant moved to Desoto County, Florida with his wife, five children and their nanny, Appellant noticed all the paperwork and I.E.P. Contracts involved with the enrollment process at Desoto County Schools, were *"already filled out"* and only needed a Parents signature for completion and execution. *(See: Case. 2:17-CV-291, at doc. 25, par.(s) 1, 2,& 12(B)).*

However, upon actually reading the unilaterally created I.E.P. Contracts, Appellant noticed that his Children were not being treated as if they have Special Needs or the Autism Condition.

Therefore, and in the midst of the confusion about being totally ignored as a parent by the school district, for nearly (3) three years at this point, Appellant filed suit in 2014, known as *Case 1:14-cv-20834*, wildly alleging the exclusionary treatment by the school officials was tantamount to chattel slavery.

In that case, the Court dismissed the action without prejudice and instructed Appellant to first Exhaust Administrative remedies. *(See: Case 2:14-cv-313...at doc. 219).* Appellant proceeded to Exhaust such Administrative Remedies, only to learn that the issues presented had nothing to do with children or a Free and

Appropriate Public Education, so Appellant filed suit again, known as Case 2:16-cv-577. *(See Complaint, at doc.43)*. The Court dismissed this action also, without prejudice.

At this point, Appellants due diligence revealed that the real problem with the school district ignoring Appellant intentionally, for years, was based upon the Vague and Confusing *Florida Statute 1003.57* and *Florida Department of Education Rule 6A-6.03411* which virtually excludes all parents, regardless of race, from being present at all initial and subsequent meetings as required by *I.D.E.A. Part B.* Plaintiff filed this instant action under Appeal, known as *Case 2:17-cv-291.*

After the Court dismissed *Case 2:17-cv-291* due to Appellants failure to Exhaust Administrative Remedies, Appellant/Plaintiff timely filed a *Rule 59 Motion* seeking to prevent a *"Travesty of Justice", (See: Case 2:17-cv-291, at doc. 82),* which was also denied. *(See: doc. at 80 and "docket irregularities ruling"—at doc. 81)*. This Appeal ensued.

STANDARD OF REVIEW

Review of this Case is De Novo since decisions by the Court below are traditionally divided into three categories, denominated questions of law (reviewable de novo), questions of fact (reviewable for clear error), and matters of

discretion (reviewable for abuse of discretion). (*See Harman v. Apfel, 211 F.3d 1172, 1174 (9th Cir. 2000)* (quotation marks and citation omitted). The selection of the appropriate standard of review is contextual. *(See United States v. Mateo-Mendez, 215 F.3d 1039, 1042 (9th Cir. 2000).*

Because Appellant seeks to ascertain the Constitutionality of *Florida Statute 1003.57* and *Florida Department of Education Rule 6A-6.03411* as well as their interpretation, this Honorable Court has Jurisdiction. *(See: Schleining v. Thomas, 642 F.3d 1242, 1246 (9th Cir. 2011); Beeman v. TDI Managed Care Svcs., 449 F.3d 1035, 1038 (9th Cir. 2006); see also Vega v. Holder, 611 F.3d 1168, 1170 (9th Cir. 2010).*

Because the Court below adopted the findings and recommendations submitted by the parties, Appellant seeks Review on such a basis as well. *(See: Klay v. United Health Group, Inc., 376 F. 3d 1092, 1096 (11th Cir. 2004); Anderson v. Bessemer City, 470 U.S. 564, 571–73 (1985); see also Silver v. Executive Car Leasing Long-Term Disability Plan, 466 F.3d 727, 733 (9th Cir. 2006); Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd., 205 F.3d 1107, 1112 (9th Cir. 2000).* Thus, the District Courts legal conclusions—-which are dispositive of this Appeal—-are reviewed de novo.

SUMMARY OF ARGUMENT

Pursuant to **I.D.E.A. Part B Regulations**, written consent must be obtained by any public agency prior to accessing a child's or parent's public benefits for insurance for the first time. The agency must provide written notification to the parent that meets the requirements of *§300.503(c)* before the agency accesses a child's or parent's benefits and then annually thereafter. *34 CFR §300.154(d)(2)(v)*—, a public agency must provide written notification, consistent with *§300.501, 300.503(c),* to the child's parents, that includes:

a.) A statement of the parental consent provisions in §300.154(d)(2)(iv)(A)–(B)
b.) A statement of the "no cost" provisions in §300.154(d)(2)(i)–(iii);

c.) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

d.) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

This notification must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so *(34 CFR § 300.503(c)).* The notification also must be provided before parental consent is obtained *(34 CFR § 300.154(d)(2)(iv)).*

The State of Florida, and or it's agents, apparently have a systematic policy of refusing to allow parents to attend the crucial meetings involving the educational destinies of their Children. For nearly (5) five years, the Desoto County School District and the Agency for HealthCare Administration has been unilaterally, and always without "Informed Parental Consent", created all Federal I.E.P. Contracts and presided singularly over all meetings, "without parental notice or attendance" at such meetings. *(See: Complaint, Case 2:17-cv-291, par. 1, 2, 2.a., 4,5, 6 & 7).*

ARGUMENT

I. Background of I.D.E.A. Part B New Regulations mandating Parental participation at all meetings regarding their Children.

I.D.E.A. Part B has (8) eight subparts and (45) forty-five parts of definitions. More specifically, and relevant to the inquiry here is § *section 300.9* regarding *"Consent"* .

Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. *(Authority: 20 U.S.C. 1414(a)(1)(D))[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61306, Oct. 30, 2007; 73 FR 73027, Dec. 1, 2008]).*

By usurping this right of a Parent to give it's Consent to the procedures herein outlined, the Fundamental Right of a Parent to manage the educational destiny of their children has been instantly violated. *(See: Meyers v. Nebraska, 262 U.S. 390 (1923); Slaughter-House Cases,* 16 Wall. 36; *Butchers' Union Co. v. Crescent City Co.,* 111 U. S. 746; *Yick Wo v. Hopkins,* 118 U. S. 356; *Minnesota v. Barber,* 136 U. S. 313; *Allgeyer v. Louisiana,* 165 U. S. 578; *Lochner v. New York,* 198 U. S. 45; *Twining v. New Jersey,* 211 U. S. 78; *Chicago, Burlington & Quincy R.R. Co. v. McGuire,* 219 U. S. 549; *Truax v. Raich,* 239 U. S. 33; *Adams v. Tanner,* 244 U. S. 590; *New York Life Ins. Co. v. Dodge,* 246 U. S. 357; *Truax v. Corrigan,* 257 U. S. 312; *Adkins v. Children's Hospital,* 261 U. S. 525; *Wyeth v. Cambridge Board of Health,* 200 Mass. 474.

II. The reason for this "Facial Challenge" to Florida Statute 1003.57 and Florida Department of Education Rule 6A-6.0341, is because these laws speak of Parents "after the fact" and in totally "non-inclusive" ways and with no certification of Parental involvement when it comes to such important meetings regarding their Children, thereby further empowering Educators to ignore Parents during the School Enrollment Process, systematically.

Specifically, *Florida Statute 1003.57* speaks of Parents after the fact, in the following subsection:

See: 1003.57(c) —

"A student may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated and found eligible as an

exceptional student in the manner proscribed by the rules of the State Board of Education. The Parent of an exceptional student evaluated and found eligible or ineligible shall be notified of each such evaluation and determination. Such notice shall contain a statement informing the Parent that he or she is entitled to a Due Process Hearing".....

Here, the law clearly declares that after a student has been evaluated, then and only then, will a Parent be notified of the decision as well as Due Process requirements. This is inaccurate and deceptive speech. The Parent must be included in the meeting where the evaluation was made. *(See: 34 C.F.R. 300.501).* Likewise, the terminology used by Florida Statute *1003.57(3)(4)* to describe the word *'Placement",* has a deceptive meaning, since Parents must be involved in all *"Placement"* decisions for their children, except under *Fla. Stat. 1003.57, where "Placement"* means —-

"The funding or arrangement of funding by an agency for all or part of the cost for an exceptional student to reside in a private residential care facility and the placement crosses district lines".

In actuality, however, *I.D.E.A. Rule 34 C.F.R. 300.536* reveals the meaning of the word "*Placement*" in it's proper context, as a mere *"Change of Placement"* and not the rhetorical and lone word *"Placement"* as is expressed by *Fla. Stat. 1003.57.*

Most importantly, there is no provision for proof of *"Parental Involvement"* before the documents thereby created are submitted to Government agencies. Without

such provisions which guarantee parental involvement has been achieved, the educational agents going under the guise of Florida Department of Education Rules are insulated and are simply under no obligation to seek such parental participation. *(See: Florida Statute 1003.57 and Fla. Dept. of Ed. Rule 6A-6.03411).*

Without language that requires proof of *"Parental Involvement"* at every meeting regarding minor children, *Fla. Stat. 1003.57 and Fla. Dept. Of Ed. Rule 6A-6.03411 & Rule 6A-6.030191* facially deprive Parents of their purported "Rights" to be present at all such "meetings" relating to "Educational Plans" and "IEP's". Without such proof certification, a school district can not proceed in good faith with a child's Educational Plan or I.E.P.

Such Statutes and Rules are Facially Unconstitutional due to their Vagueness, since such vagueness works to systematically exclude all parents from all meetings held regarding their Children. In essence, such Statutes and Rules represent mere "lip service" with no verification, and implicate Procedural and Substantive Due Process violations without such "Notice and Certification" that such "Parental Involvement" has ever been accomplished.

As a matter of fact and law, when viewing the challenged Statutes and Rules, an "average person of common intelligence" can not reasonably know, without

speculating, whether or not Parents should be included in all meetings held regarding their minor children. *(See: Franklin v. State,No. SC03-413.Decided: September 30, 2004 Papachristou v. Jacksonville,(1972)No. 70-5030, Argued: December 8, 1971 Decided: February 24, 1972 Kolander v. Lawson,Kolender v. Lawson, 461 U.S. 352 (1983) Hoffman Estates v. The Flipside, Hoffman Estates, Inc., (1982)No. 80-1681Argued: December 9, 1981, Decided: March 3, 1982) & Johnson v. United States, 135 S.Ct. 2551 (2015).*

More specifically, roots of the Vagueness Doctrine extend deep into the two Due Process Clauses, in the Fifth and Fourteenth Amendments to the United States Constitution. The courts have generally determined that vague laws deprive citizens of their rights without fair process, thus violating due process.

Therefore, all Florida laws relating to the so-called **"Family and School Partnership for Student Achievement Act"** should be considered Unconstitutional and Void forVagueness. Without some type of Legal Certification of actual Parental Involvement, the door is open wide for Governmental Fraud and blatant mis-representation of Parents and Students seeking participation in enrollment processes under I.D.E.A.

III. If Parents have a Fundamental Constitutional Right to manage the Educational and Medical decisions regarding their Children, then the Rhetorical Vagueness and Non-Certification Standards of Florida Statutes

1003.57 and Florida Department of Education Rule 6A-6.03411completely chills the exercise of such Protected Constitutional Rights.

The Fourteenth Amendments Due Process Clause has a substantive component that provides heightened protection against Government interference with certain Fundamental rights and Liberty interests. *(See: Washington v. Glucksberg, 521 U.S. 702, 720), Meyers v. Nebraska, 262 U.S. 390 (1923) including a parents Fundamental Right to make decisions concerning the care, custody and control of their children. (See: Stanley v. Illinois,405 U.S. 645, 651. Pp. 5-8); Parham v. J. R., 442 U.S. 584, 602 & Reno v. Flores, 507 U.S. 292, 304).*

In Meyer v. Nebraska,-the Court invalidated a state law which prohibited foreign language instruction for school children because the law did not "promote" education but rather "arbitrarily and unreasonably" interfered with "the natural duty of the parent to give his children education suitable to their station in life..."

The Fourteenth Amendment provides that no State shall *"deprive any person of life, liberty, or property, without due process of law"*. Likewise, the U.S. Supreme Court has long ago recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, *"guarantees more than fair process." (See: Washington* v. *Glucksberg,* 521 U.S. 702, 719 (1997).

Furthermore, the Court emphasized,

"The Fourteenth Amendment guarantees the right of the individual ... to establish a home and bring up children, to worship God according to his own conscience." In 1925, the Supreme Court decided the *Pierce v. Society of Sisters* case, thereby supporting *Meyer's* recognition of the parents' right to direct the religious upbringing of their children and to control the process of their education". *(Citing Meyers, Supra).*

In *Pierce*, the Supreme Court struck down an Oregon compulsory education law which, in effect, required attendance of all children between ages eight and sixteen at *public* schools. That Court declared:

"Under the doctrine of Meyer v. Nebraska, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children".

In addition to upholding the right of parents to direct the upbringing and the education of their children, *Pierce* also asserts the parents' Fundamental Right to keep their children free from government standardization.

IV. Contrary to the lower court's ruling, Exhaustion of Administrative Remedies is not required when such Exhaustion would be futile, since a "Free and Appropriate Public Education" (F.A.P.E.), has not been complained about.

As stated earlier, the Lower Court adopted the findings of the several parties in the case, and no investigation was made into the facts of the matter. Such a position is reviewable on Appeal. *(See Anderson v. Bessemer City*, 470 U.S. 564, 571–73 (1985); *Silver v. Executive Car Leasing Long-Term Disability Plan, 466 F.3d 727,*

733 (9th Cir. 2006); Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd., 205 F.3d 1107, 1112 (9th Cir. 2000)).

Upon viewing the actual Complaint however, one notices that the requirements of *Fry v. Napoleon* have easily been met by Appellant. No relief is being sought under I.D.E.A., or any other Disability related laws, as a matter of fact and law. In *Fry*, the Court declared and held resoundingly that:

"Exhaustion of the IDEA's administrative procedures is unnecessary where the gravamen of the Plaintiff's suit is something other than the denial of the IDEA's core guarantee of a FAPE. Pp. 9-18. (a) The language of 1415(l) compels Exhaustion when a Plaintiff seeks relief that is "available" under IDEA. Establishing the scope of 1415, then, requires identifying the circumstances in which the IDEA enables a person to obtain redress or access a benefit. That inquiry immediately reveals the primacy of a FAPE in the statutory scheme. The IDEA's stated purpose and specific commands center on insuring a FAPE for children with disabilities. And the IDEA's administrative procedures test whether a school has met this obligation...

Any decision by a hearing Officer on a request for substantive relief "shall" be "based on a determination of whether the child received a Free and Appropriate Public Education. (1415(f)(3)(E)(i). Accordingly, 1415's exhaustion rule hinges on whether a lawsuit seeks relief for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required. Pp. 9-13. (b) In determining whether a Plaintiff seeks relief for the denial of a FAPE, what matters is the gravamen of the Plaintiff's complaint, setting aside any attempts at artful pleading.

That inquiry makes central the Plaintiff's own claims, as 1415(l) explicitly requires in asking whether a lawsuit in fact "seeks" relief available under the IDEA. But examination of a Plaintiff's Complaint should consider substance, not surface: 1415(l) requires exhaustion when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE, even if it is not phrased or framed in precisely that way.

In addressing whether a complaint fits that description, a court should attend to the diverse means and ends of the statutes covering persons with disabilities. The

IDEA guarantees individually tailored educational services for children with disabilities, while Title II and 504 promise non-discriminatory access to public institutions for people with disabilities of all ages. That is not to deny some overlap in coverage: The same conduct might violate all three statutes. But still, these statuary differences mean that a complaint brought under Title II and 504 might instead seek relief for simple discrimination, irrespective of the IDEA's FAPE obligation.

One clue to the gravamen of a complaint can come from asking a pair of hypothetical questions. First, could the Plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school?. Second, could an adult at the school have pressed essentially the same claim if the alleged conduct had occurred at a public facility that was not a school? When the answer to those questions is a yes, a complaint that does not expressly allege the denial of FAPE is also unlikely to be truly about the subject"....(Citing Fry, supra).

Therefore, even though Appellant actually attended only (2) two I.E.P. meetings, over a (5) five year period, and also a Due Process Hearing, it was at this Hearing where it was learned that **FAPE** was never the issue in this case, but instead, the intentional violations of Appellants right to Privacy, it's Fundamental Right to manage the Care and Education of his Children, as well as the mandate by *I.D.E.A. Part B* to allow Parents to attend all meetings.

Also, Appellant takes issue with the manner in which the defendants in the case unlawfully accessed Appellants and his Children's Medicaid Insurance, for the first time, without Appellants knowledge or Informed Consent. This has always been the purported *"gravamen"* of Appellants action.

V. When a Complaint does not seek a FAPE or any other relief under I.D.E.A., lawsuits under 42 U.S.C. 1983 should not be dismissed for the sake of Exhaustion of Administrative Remedies.

Although the District Court, in it's integrity and wisdom, ultimately decided Appellant needs to Exhaust Administrative remedies, such a determination was based, for the most part, upon assertions of the defendants, and not upon the facts developed by the Courts analysis.

For instance, in *Patsy v. Florida Board of Regents, 457 U.S. 496 (1982)*, Supreme Court Justice Throughgood Marshall delivered the Opinion:

"This case presents the question whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U.S.C. 1983 (1976 ed., Supp. IV). Petitioner Georgia Patsy filed this action, alleging that her employer, Florida International University (FIU), had denied her employment opportunities solely on the basis of her race and sex. By a divided vote, the United States Court of Appeals for the Fifth Circuit found that petitioner was required to exhaust "adequate and appropriate" administrative remedies, and remanded the case to the District Court to consider the adequacy of the administrative procedures. (Patsy v. Florida International University, 634 F.2d 900 (1981) (en banc). We granted certiorari, 454 U.S. 813 , and reverse the decision of the Court of Appeals"...

"The question whether exhaustion of administrative remedies should ever be required in a 1983 action has prompted vigorous debate and disagreement. (See, e. g., Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Cases in the Federal Courts, 92 Harv. L. Rev. 610 (1979); Note, 8 Ind. L. Rev. 565 (1975); Comment, 41 U. Chi. L. Rev. 537 (1974)"...

"Our resolution of this issue, however, is made much easier because we are not writing on a clean slate. This Court has addressed this issue, as well as related issues, on several prior occasions". (See: McNeese v. Board of Education, 373 U.S. 668, 671 -673 (1963), we have on numerous occasions rejected the argument that a 1983 action should be dismissed where the plaintiff has not exhausted state

administrative remedies". (See also Barry v. Barchi, 443 U.S. 55, 63 , n. 10 (1979); Gibson v. Berryhill, 411 U.S. 564, 574 (1973); Carter v. Stanton, 405 U.S. 669, 671 (1972); Wilwording v. Swenson, 404 U.S. 249, 251 (1971); Houghton v. Shafer, 392 U.S. 639, 640 (1968); King v. Smith, 392 U.S. 309, 312 , n. 4 (1968); Damico v. California, 389 U.S. 416 (1967). Cf. Steffel v. Thompson, 415 U.S. 452, 472 -473

VI. Not only are Parents systematically ignored when it comes to their Children's Education, the Vague Statutes challenged also empower private actors at Public Hospitals to totally exclude Constitutionally protected persons from managing the medical aspects of their Children's lives as well, in bold violation of the EMTALA.(1974)...

A peripheral defendant in the case below is the Jack Nicklaus Miami Children's Hospital, who literally turned Appellants son away from it's magnificent programs designed to help the Autistic Person. *(See: Case 2:17-cv-291, doc. 25, par. 3, 8 & 9).* Appellant also claims damages under *EMTALA.*

VII. The Court below denied Appellants timely filed Rule 59 Motion, as if Appellants claim was brought under I.D.E.A.,when to the extreme contrary, the action is a Facial Challenge to Florida Statutes

When the Honorable Court below denied Appellants Rule 59 Motion, it ignored the plain facts within the motion itself. For example, on page 2 of the Rule 59 Motion, (at doc. 82), it is declared that:

1.) *Plaintiff's Operative First Amended Complaint does not contain any allegations pursuant to or relating to an I.D.E.A. cause of action, as a matter of fact and law. (See: Exhibit A)

1. b.) **Plaintiff's Operative First Amended Complaint does not contain any other allegations relating to Causes of Action regarding disabled or handicapped children's rights, as a matter of fact and law. (See: Exhibit A).

1. c.) ***The definitively false advocation of an I.D.E.A. cause of action supposedly being found within the "four corners" of the First Amended Complaint, represents the very foundation of an intentional "Travesy of Justice" being perpetrated against this Plaintiff's Constitutional Due Process Rights. (See: Exhibit A).

For the above reasons alone, Appellants Rule 59 Motion should have been granted.

FLORIDA'S ATTORNEY GENERAL HAS SURPRISINGLY REFRAINED FROM COMMENTING OR RESPONDING ABOUT THE CHALLENGED STATUTES THROUGHOUT THE CASE BELOW

This Appellant has previously noticed the Florida Attorney General, the Honorable Pam Bondi, at the outset of this case, according to the requirements of Fed. R. Of Civ. P. Rule 5.1(a)(1)(B) and Florida Statute 86.091. *(See: Case 2:17-cv-291, at doc 8)*. The Honorable Court below also Noticed and informed the Florida Attorney General according to 28 U.S.C. 2403 and 2403(b). Such Notice also was ignored. *(See: Case 2:17-cv-291, at doc. 8)*.

CONCLUSION

As matter of fact and law, *Florida Statute 1003.57, 6A-6.0341,* and *Rule 6A-6.030191* are merely rhetorically and confusingly Vague Literary devices or tools that provide no guidance to the general public, and especially Parents, about what is required and the proof thereof regarding the availability or verification of Parental involvement at School Meetings.

This vaguely worded Act, which leads the reader on a journey into confusion and mystery, finally ends at *Florida Department of Education Rule 6A-6.030191*, which feebly attempts to declare that Parents are required at "Educational Planning Meetings", if, your child is "gifted" or exceptional as well as gifted", whatever that means. The problem arises with *6A-6.030191* immediately, since it is only directed towards *'Educational Planning Meetings"*.

The Statute effectively fails to mention there are other meetings where a Parent must also attend. For example, "all meetings relating to the (b) identification, evaluation, and educational placement of the child"...*(See: 34 C.F.R. 300.501(b)(2)]).* The above examples only partially describes the Vagueness of the so-called *"Florida Family and School Partnership for Student Achievement Act"* and it's attendant Statutes and Rules.

This is a highly Confusing and Vague use of English Vernacular and should be deemed invalid Facially due to such identifiable Vagueness. *(See: Franklin v. State, No. SC03-413.Decided: September 30, 2004 Papachristou v. Jacksonville, (1972)No. 70-5030, Argued: December 8, 1971 Decided: February 24, 1972 Kolander v. Lawson,Kolender v. Lawson, 461 U.S. 352 (1983) Hoffman Estates v. The Flipside, Hoffman Estates, Inc., (1982)No. 80-1681Argued: December 9, 1981, Decided: March 3, 1982) & Johnson v. United States, 135 S.Ct. 2551 (2015).*

In essence, there is no Rational Basis for the existence of Statutes and Rules that work to confuse and are inadequate and Vague on their face, in every application relating to Parent Citizens of the United States. *(See: Lawrence v. Texas, 539 U.S. 558 (2003), Romer v. Evans, 517 U.S. 620 (1996) & U.S. Dept. of Agric. v. Moreno, 413 U.S. 528 (1973).*

At the very least, the *"Florida Family and School Partnership for Student Achievement Act"* appears on it's face to discriminate against **all** parents of school children, who need to know the law and when they are required at meetings to shape and mold their children's educational destiny. Additionally, the Act and it's attendant Statutes and Rules could be construed as being created for "Forbidden Purposes". *(See: Board of Airport Commissioners v. Jews for Jesus, 482 U.S. 569, 573 (1987) & Miami Herald v. Tornillo, 418 U.S. 241, 259 (1974)).*

Finally, the total and absolute policy of systematic exclusion of not only all African American Parent/Persons, but all other races, is a clear violation of the Equal Protection Clause. *(See: Brown v. Board of Education, 347 U.S. 483, 492 (1954), Hunter v. Erikson, 393 U.S. 385, 392-93 (1969), Loving v. Virginia, 388 U.S. 1),*

Such Vague Statutes and Rules also appear to violate the *Commerce Clause* and the *Free Speech Clause* in their applications. *(See: United States v. Morrison, 529 U.S. 598, 627 (2001), United States v. Lopez, 514 U.S. 549, 559-68 (1995)., W. Lynn*

Creamery, Inc. v. Healy, 512 U.S. 186, 199 (1994), United States v. Stevens, 130, S. Ct. 1577 (2010), Citizens United v. Fed. Election Commission, 130 S. Ct. 876, 913 (2010) &Ashcroft v. Free Speech Coalition, 535 U.S. 234, 258 (2002)(Free Speech Clause).

Likewise, because there is no evidence of the Complaint seeking relief under *I.D.E.A.*, the plain instructions of *Fry* should apply. If anything, Appellants mere visit thru the Florida Administrative section/process shone light upon the highly Vague and Confusing Statutes tied to the *"Florida Family and School Partnership for Student Achievement Act"*, which is deemed to be Over-Reaching and Vague, made for a Forbidden Purposes and In violation of the Equal Protection Clause, The Due Process Clause and the Free Speech Clause.

This Act should be declared Invalid as it applies to all Parents within the State of Florida, and has no good application no matter how it is applied, due to it's Vagueness.

This Appeal should be remanded back to the lower District Court with an eye to changing the language of the challenged Statutes to include Verification and Certification of all required Parental meetings regarding a child's education. Certification and verification should be also mandated for parents who do not wish to be involved in the school enrollment process.

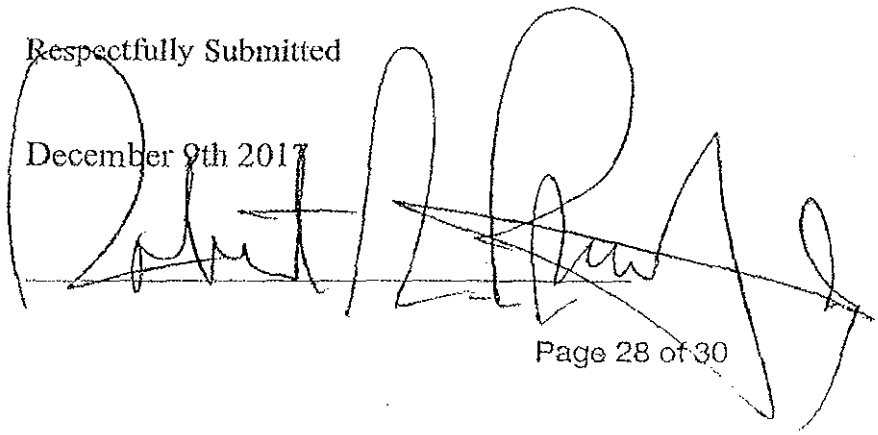
In this light, there would be no room for Fraud against the Government via Title VI and I.D.E.A., against the Fundamental Rights of U.S. Citizens, the Rehabilitation Act or the various Disability Statutes, since Parents would then be guaranteed involvement with each step of the process, totally eliminating the Vagueness, confusion and endless litigation over greed and unilateral efforts of State Actors seeking to manipulate the United States Government coffers, at the expense of Parents/Citizens seeking merely to raise their children in the best way possible.

States are simply not allowed to surreptitiously manipulate, direct or control children's education without Parental Informed Consent, no matter the style of expression or method of execution. Such conduct immediately illustrates a modern day contravention of *Meyers v. Nebraska*, where an entire State is actively involved in exerting such Supreme Control over mere children, with no Rational Basis whatsoever.

This Case should be allowed to proceed along it's logical course, and according to the plain commands of *Patsy v. Florida Board of Regents*, and for any other and further relief this Honorable Court deems just and proper.

Respectfully Submitted

December 9th 2017



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CERTIFICATE OF SERVICE

I hereby Certify, under penalty of Perjury, that the foregoing is a true and correct account of the facts herein enumerated, and that this Appeal Brief was served by Certified Mail upon the following entities and individuals, on or about **December 9th 2017.**

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