

Opinion of SCALIA, J.

SUPREME COURT OF THE UNITED STATES

No. 05–983

JACOB WINKELMAN, A MINOR, BY AND THROUGH HIS
PARENTS AND LEGAL GUARDIANS, JEFF AND SANDEE
WINKELMAN, ET AL., PETITIONERS *v.* PARMA
CITY SCHOOL DISTRICT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[May 21, 2007]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
concurring in the judgment in part and dissenting in part.

I would hold that parents have the right to proceed *pro se* under the Individuals with Disabilities Education Act (IDEA), 20 U. S. C. §1400 *et seq.* (2000 ed. and Supp. IV), when they seek reimbursement for private school expenses or redress for violations of their own procedural rights, but not when they seek a judicial determination that their child’s free appropriate public education (or FAPE) is substantively inadequate.

Whether parents may bring suits under the IDEA without a lawyer depends upon the interaction between the IDEA and the general *pro se* provision in the Judiciary Act of 1789. The latter, codified at 28 U. S. C. §1654, provides that “[i]n all courts of the United States *the parties* may plead and conduct their own cases personally or by counsel.” (Emphasis added.) The IDEA’s right-to-sue provision, 20 U. S. C. §1415(i)(2)(A) (2000 ed., Supp. IV), provides that “[a]ny *party aggrieved* by the findings and decision [of a hearing officer] shall have the right to bring a civil action with respect to the [administrative] complaint.” (Emphasis added.) Thus, when parents are “parties aggrieved” under the IDEA, they are “parties” within

Opinion of SCALIA, J.

the meaning of 28 U. S. C. §1654, entitled to sue on their own behalf.¹

As both parties agree, see Tr. of Oral Arg. 7; Brief for Respondent 37, “party aggrieved” means “[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person’s actions or by a court’s decree or judgment,” Black’s Law Dictionary 1154 (8th ed. 2004); see also *ante*, at 12. This case thus turns on the rights that the IDEA accords to parents, and the concomitant remedies made available to them. Only with respect to such rights and remedies are parents properly viewed as “parties aggrieved,” capable of filing their own cases in federal court.

A review of the statutory text makes clear that, as relevant here, the IDEA grants parents only two types of rights.² First, under certain circumstances “a court or a hearing officer may require the [school district] to reimburse *the parents*” for private school expenditures “if the court or hearing officer finds that the [school district] had not made a free appropriate public education available to the child.” 20 U. S. C. §1412(a)(10)(C)(ii) (2000 ed., Supp. IV) (emphasis added). Second, parents are accorded a

¹As the Court notes, *ante*, at 2, 18, petitioners also argue that even if parents do not have their own rights under the statute, they nonetheless may act on behalf of their child without retaining a lawyer. Both sides agree, however, that the common law generally prohibited lay parents from representing their children in court, a manifestation of the more general common-law rule that nonattorneys cannot litigate the interests of another. See Brief for Petitioners 37; Brief for Respondent 9–10; see also, *e.g.*, *Collingsru v. Palmyra Bd. of Ed.*, 161 F. 3d 225, 232 (CA3 1998). Nothing in the IDEA suggests a departure from that rule.

²Because the grant of those rights is clear, and because I find no statutory basis for any other rights, I need not decide whether the Spending Clause’s “clear notice” requirement is applicable here. Cf. *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 548 U. S. ___, ___ (2006) (slip op., at 4).

Opinion of SCALIA, J.

variety of procedural protections, both during the development of their child’s individualized education program (IEP), see, *e.g.*, §1414(d)(1)(B)(i) (parents are members of their child’s IEP team); §1415(b)(1) (parents must have an opportunity to examine records and participate in IEP meetings), and in any subsequent administrative challenges, see, *e.g.*, §§1415(b)(6), (8) (parents may file administrative due process complaints). It is clear that parents may object to procedural violations at the administrative due process hearing, see §1415(b)(6)(A), and that a hearing officer may provide relief to parents for certain procedural infractions, see §1415(f)(3)(E)(ii). Because the rights to reimbursement and to the various procedural protections are accorded to parents themselves, they are “parties aggrieved” when those rights are infringed, and may accordingly proceed *pro se* when seeking to vindicate them.³

The Court goes further, however, concluding that parents may proceed *pro se* not only when they seek reimbursement or assert procedural violations, but also when they challenge the substantive adequacy of their child’s FAPE—so that parents may act without a lawyer *in every IDEA case*. See *ante*, at 11–16. In my view, this sweeps far more broadly than the text allows. Out of this sprawling statute the Court cannot identify even *a single* provision stating that parents have the substantive right to a FAPE. The reason for this is readily understandable: The right to a free appropriate public education obviously inheres in the child, for it is he who receives the education.

³Of course when parents assert procedural violations, they must also allege that those violations adversely affected the outcome of the proceedings. Under Article III, one does not have standing to challenge a procedural violation without having some concrete interest in the outcome of the proceeding to which the violation pertains, see *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 571–578 (1992), here the parents’ interest in having their child receive an appropriate education.

Opinion of SCALIA, J.

As the IDEA instructs, participating States must provide a “free appropriate public education . . . to all children with disabilities” §1412(a)(1)(A) (2000 ed., Supp. IV). The statute is replete with references to the fact that a FAPE belongs to the child. See, *e.g.*, §1400(d)(1)(A) (IDEA designed “to ensure that all children with disabilities have available to them a free appropriate public education”); §1408(a)(2)(C)(i) (referring to “the right of a child” to “receive a free appropriate public education”); §1411(e)(3)(F)(i) (same); §1414(a)(1)(D)(i)(II) (referring to an agency “that is responsible for making a free appropriate public education available to a child”); §1415(b)(6)(A) (referring to “the provision of a free appropriate public education to [a] child”). The parents of a disabled child no doubt have an *interest* in seeing their child receive a proper education. But there is a difference between an *interest* and a statutory *right*. The text of the IDEA makes clear that parents have no *right* to the education itself.⁴

The Court concedes, as it must, that while the IDEA gives parents the right to reimbursement and procedural protection in explicit terms, it does not do so for the supposed right to the education itself. *Ante*, at 12. The obvious inference to be drawn from the statute’s clear and explicit conferral of discrete types of rights upon parents and children, respectively, is that it does not by accident confer the parent-designated rights upon children, or the children-designated rights upon parents. The Court believes, however, that “the statute prevents us from placing too much weight on [this] implicatio[n].” *Ibid.* That conclusion is in error. Nothing in “the statute,” undermines the obvious “implication” of Congress’s scheme. What the

⁴Nor can a parental right to education be justified, as the Court attempts, see *ante*, at 14–15, on the theory that the IDEA gives parents a legal right to *free* schooling for their child. Parents acquire such a right (in limited circumstances) only when they enroll their child in a private institution. §1412(a)(10)(C)(ii) (2000 ed., Supp. IV).

Opinion of SCALIA, J.

Court relies upon for its conclusion that parents have a substantive right to a FAPE is not the “statutory structure,” *ante*, at 13, but rather the myriad *procedural* guarantees accorded to parents in the administrative process, see *ibid.* But allowing parents, by means of these guarantees, to help shape the contours of their child’s education is simply not the same as giving *them* the right to that education. Nor can the Court sensibly rely on the provisions governing due process hearings and administrative appeals, the various provisions that refer to the “parent’s complaint,” see, e.g., 20 U. S. C. §1415(i)(3)(B)(i)(III) (2000 ed., Supp. IV), or the fact that the right-to-sue provision, §1415(i)(2)(A), refers to the administrative complaint, which in turn allows parents to challenge “any matter” relating to the provision of a FAPE, §1415(b)(6)(A). These provisions prove nothing except what all parties concede: that parents *may* represent their child *pro se* at the administrative level. See Brief for Petitioners 17–18, 40; Brief for United States as *Amicus Curiae* 12; Brief for Respondent 13, 44; see also *Collingsru v. Palmyra Bd. of Ed.*, 161 F. 3d 225, 232 (CA3 1998). Parents thus have the power, at the administrative stage, to litigate *all* of the various rights under the statute since at that stage they are acting not only on their *own* behalf, but on behalf of *their child* as well. This tells us nothing whatever about *whose* rights they are.⁵ The Court’s spraying statutory

⁵ Contrary to indications in the Court’s opinion, *ante*, at 13, and to the apparent language of the statute, a hearing officer does not always render a decision “on substantive grounds based on a determination of whether the child received a free appropriate public education.” §1415(f)(3)(E)(i) (2000 ed., Supp. IV). That provision is “[s]ubject to clause (ii),” *ibid.*, which provides that “[i]n matters alleging a procedural violation” a hearing officer can grant relief if “the procedural inadequacies . . . significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child,” §1415(f)(3)(E)(ii)(II). It is true that a hearing officer who accepts such

Opinion of SCALIA, J.

sections about like buckshot cannot create a substantive parental right to education where none exists.

Harkening back to its earlier discussion of the IDEA’s “text and structure” (by which it means the statute’s procedural protections), the Court announces the startling proposition that, in fact, the “IDEA does not differentiate . . . between the rights accorded to children and the rights accorded to parents.” *Ante*, at 13. If that were so, the Court could have spared us its painful effort to craft a distinctive parental right out of scattered procedural provisions. But of course it is not so. The IDEA quite clearly differentiates between the rights accorded to parents and their children. See *Emery v. Roanoke City School Bd.*, 432 F. 3d 294, 299 (CA4 2005) (“[P]arents and children are distinct legal entities under the IDEA” (internal quotation marks omitted)). As even petitioners’ *amici* agree, “Congress specifically indicated that parents have rights under the Act that are separate from and independent of their children’s rights.” Brief for Senator Edward M. Kennedy et al. as *Amici Curiae* 18. Does the Court seriously contend that a child has a right to reimbursement, when the statute most definitively provides that if “*the parents* of a child with a disability” enroll that child in private school, “a court . . . may require the [school dis-

an allegation nominally grants relief by concluding that the child did not receive a FAPE, §1415(f)(3)(E)(ii), but it is clear from the structure of the statute that this is not a decision on the substantive adequacy of the FAPE, but rather the label attached to a finding of procedural defect. Petitioners agree with me on this point. See Brief for Petitioners 31, n. 23. See also 20 U. S. C. §1415(f)(3)(E)(iii) (2000 ed., Supp. IV) (“Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section”). In any event, even if a hearing officer was required to render a decision on the substantive adequacy of the FAPE, that feature of the statute still gives no clue as to whether parents’ vindication of that substantive right at the administrative stage is on their own behalf or on behalf of the child.

Opinion of SCALIA, J.

trict] to reimburse *the parents* for the cost of that enrollment”? §1412(a)(10)(C)(ii) (2000 ed., Supp. IV) (emphasis added); see also Brief for Senator Edward M. Kennedy et al. as *Amici Curiae* 21 (“The right of reimbursement runs to the parents”). Does the Court believe that a child has a procedural right under §§1414(d)(1)(C)(i)–(iii) (2000 ed., Supp. IV), which gives *parents* the power to excuse an IEP team member from attending an IEP meeting? The IDEA does not remotely envision communal “family” rights.

The Court believes that because parents must prove the substantive inadequacy of a FAPE before obtaining reimbursement, §1412(a)(10)(C)(ii) (2000 ed., Supp. IV), and because the suitability of a FAPE may also be at issue when procedural violations are alleged, §1415(f)(3)(E)(ii), it is “out of accord with the statute’s design” to “prevent [parents] from obtaining a judgment mandating that the school district provide their child” with a FAPE. *Ante*, at 14. That is a total non sequitur. That Congress has required parents to demonstrate the inadequacy of their child’s FAPE in order to vindicate their own rights says nothing about whether parents possess an underlying right to education. The Court insists that the right to a FAPE is the right “most fundamental to the Act.” *Ante*, at 12. Undoubtedly so, but that sheds no light upon whom the right belongs to, and hence upon who can sue in their own right. Congress has used the phrase “party aggrieved,” and it is this Court’s job to apply that language, not to run from it.

The Court further believes that a distinction between parental and child rights will prove difficult to administer. I fail to see why that is so. Before today, the majority of Federal Courts of Appeals to have considered the issue have allowed parents to sue *pro se* with respect to some claims, but not with respect to the denial of a FAPE. See *Mosely v. Board of Ed. of Chicago*, 434 F. 3d 527, 532 (CA7

Opinion of SCALIA, J.

2006); *Collingsru*, 161 F. 3d, at 233; *Wenger v. Canastota Central School Dist.*, 146 F. 3d 123, 126 (CA2 1998) (*per curiam*); *Devine v. Indian River Cty. School Bd.*, 121 F. 3d 576, 581, n. 17 (CA11 1997). The Court points to no evidence suggesting that this majority rule has caused any confusion in practice. Nor do I see how it could, since the statute makes clear and easily administrable distinctions between parents' and children's legal entitlements.

Finally, the Court charges that the approach taken by the majority of Courts of Appeals would perpetrate an "injustice," *ante*, at 15, since parents who do not seek reimbursement or allege procedural violations would be "without a remedy," *ante*, at 14–15. That, of course, is not true. They will have the same remedy as all parents who sue to vindicate their children's rights: the power to bring suit, represented by counsel. But even indulging the Court's perception that it is unfair to allow some but not all IDEA parents to proceed *pro se*, that complaint is properly addressed to Congress, which structured the rights as it has, and limited suit to "party aggrieved." And there are good reasons for it to have done so. *Pro se* cases impose unique burdens on lower courts—and on defendants, in this case the schools and school districts that must hire their own lawyers. Since *pro se* complaints are prosecuted essentially for free, without screening by knowledgeable attorneys, they are much more likely to be unmeritorious. And for courts to figure them out without the assistance of plaintiff's counsel is much more difficult and time-consuming. In both categories of *pro se* parental suit permitted under a proper interpretation of the statute, one or the other of these burdens is reduced. Actions seeking reimbursement are less likely to be frivolous, since not many parents will be willing to lay out the money for private education without some solid reason to believe the FAPE was inadequate. And actions alleging procedural violations can ordinarily be disposed of without

Opinion of SCALIA, J.

the intensive record-review that characterizes suits challenging the suitability of a FAPE.

* * *

Petitioners sought reimbursement, alleged procedural violations, and requested a declaration that their child's FAPE was substantively inadequate. *Ante*, at 3. I agree with the Court that they may proceed *pro se* with respect to the first two claims, but I disagree that they may do so with respect to the third.