The IDEA Behind Educationism and Meaningful Participation [*Beer v. USD 512 Shawnee Mission*]

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In Beer v. USD 512 Shawnee Mission*, the United States District Court for the District of Kansas held that a child's free, appropriate public education was denied partly due to the school's failure to allow the parents to "participate meaningfully" in the creation of their child's Individualized Education Program. The court conducted a thorough analysis of this issue and concluded that the parents needed not only access to all relevant information regarding their child's education but also needed to understand the information they were given. This Comment discusses the educationism illustrated by the court and why structural change is necessary in order to ensure special needs children receive the level of education they are entitled to.*

I. INTRODUCTION

Beer v. USD 512 Shawnee Mission[1] may be the case that sparks a dialogue leading the legislature to acknowledge its education bias that has long assumed the accessibility of parents' meaningful participation in their children's special education ("SPED"). In holding that United States District 512 substantively denied the Beers' child a free, appropriate public education ("FAPE") by hindering their ability to understand the full picture of the IEP process, the court acknowledged for the first time parents' understanding as imperative for their child's quality of education.[2] This further parses out the parental involvement requirement outlined in the Individuals with Disabilities Education Act ("IDEA") that provides theoretical guidance for parents but provides this guidance through rose-colored glasses. This decision marks a significant turning point in the conversations surrounding special education and parental involvement.

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1. *See* Beer v. USD 512 Shawnee Mission, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822 (D. Kan. Mar. 17, 2023).

2. *See id*.

II. BACKGROUND

A. Case Description

Congress enacted the IDEA to ensure students with disabilities were properly given a FAPE comparable to an education of non-disabled students.[3] Included in this broadly written legislation is the requirement that schools create an Individualized Education Program ("IEP") for each eligible student with the goal in mind that the child's SPED would help them stay on track with their peers.[4] When creating these IEPs, school officials often collaborate with the student's parents and other professionals[5] to establish the means by which the student receives a FAPE.[6] There is great emphasis[7] on this collaboration because every student is unique, and "those people who are most familiar with the child's needs" are essential in the program's tailoring.[8]

When there is a dispute regarding a student's receipt of a FAPE or problems with their IEP, parents may attempt informal negotiations with the school before proceeding with the more complex, procedural process of filing a complaint under the IDEA.[9] In some instances, the initial mediation allows for resolution without court involvement. However, as *Beer* demonstrates, sometimes parents have no choice but to proceed with daunting litigation after unsuccessful mediation attempts and continued belief their child was denied a FAPE.[10]

The *Beer* case started in August 2017 when their child's teacher informed the Beers that their child exhibited social and behavioral difficulties.[11] Their child "had difficulty following directions, withdrew from his peers, and could need additional support" at school, such as SPED services typically outlined in IEPs.[12]

The child's teacher advised the Beers to request an education evaluation from the school in writing because, legally, the school had to take action within sixty days.[13] They submitted their request that day.[14] In the ensuing months, the child's IEP team started collecting data to formulate

3. *Id.* at *95.
4. *Id.* at *19.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at *44 (quoting Amanda J. *ex rel.* Annette J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 892 (9th Cir. 2001)).
9. *See id.* at *19–20.
10. *Id.* at *18–19.
11. *Id.* at *4–5.
12. *Id.* at *5.
13. *Id.* at *6.
14. *Id.*

its evaluation of the child and their potential areas of need.[15] Over time, however, this data became inconsistent and even contradictory, resulting in Mrs. Beer's request for more data.[16] On the sixtieth day, December 6, 2018, the IEP team met with the Beers and asked Mrs. Beer to give her consent to a prolonged evaluation period—longer than the sixty days she was initially told, and they were legally bound by.[17] Under the impression the extension was due to a missed IEP meeting in November, Mrs. Beer consented to what she thought was one additional month to make up for November.[18] The alleged consent was a piece of paper with the handwritten words: "Shawnee Mission School District + Parent agreed to extend evaluation."[19] Mrs. Beer signed and wrote the date "11-28-18", the date of the missed November meeting.[20] But, to the Beers' surprise and dissatisfaction, the IEP team's evaluation was not complete until February 2019, and their child's IEP was not implemented until December 2019—one year after the initial due date of the team's evaluation.[21] Ultimately, this resulted in the child continuing without SPED services for longer than necessary—"services he need[ed] to be a successful student and citizen"[22]—because the Beers simply did not understand what they were consenting to or the overall IEP procedural process. And, USD 512 did nothing to help clarify.

After the IEP was implemented in December, the child showed no behavioral progress in the classroom.[23] However, the child informed the Beers that there were discrepancies between their IEP and how it was followed in the school.[24] Reportedly, the child was removed from class to work with their paraprofessional more often than what the IEP called for.[25] School staff admitted to this but alleged this practice *was* in conformity with the IEP, citing the IEP's "vague terms" that caused staff confusion.[26] After learning this, the Beers filed a complaint with the Kansas State Department of Education ("KSDE").[27]

KSDE investigated USD 512 and concluded it violated the SPED statute.[28] Following this determination, the Beers proceeded to file a request for a due process hearing[29] as required in alleged IDEA violations

15. *Id.* at *7.
16. *Id.* at *7–8.
17. *Id.*
18. *Id.* at *31.
19. *Id.*
20. *Id.*
21. *Id.* at *11–12.
22. *Id.* at *35 (quoting Natalie Beer's letter of dissent, submitted when she signed the consents).
23. *Id.* at *12.
24. *Id.*
25. *Id.* at *13.
26. *Id.* at *75.
27. *Id.* at *13.
28. *Id.*
29. *Id.* at *15.

before the case can reach state or federal court. At that hearing, because of the issues outlined above, the Hearing Officer issued his decision that the Beers' child was denied a FAPE.[30] He further reiterated the denial was in part due to the significant impairment of the Beers' "opportunity to participate in the decision-making process"[31] because they did not fully understand enough to participate or even know their opportunities.

When the parties failed to reach an agreement on a remedy, they appealed to the Kansas District Court.[32] In addition to the disputed remedies, the court was asked to review the Beers' allegations of USD 512's failure to meet: (1) its procedural obligations regarding their child's evaluation timeline;[33] and (2) its substantive obligations in conducting an insufficient evaluation of their child.[34]

B. Legal Background

One of the central contentions in *Beer* asserts that the parents were unable to fully participate in their child's IEP process, ultimately resulting in their child's denial of a FAPE.[35] The case highlights how essential parent involvement is in special education because those closest to the child offer unique and valuable perspectives that may differ from those at school. To understand this in the broader legal context, it is necessary to first understand what fully informed parent participation looks like as proposed under the IDEA.

Congress enacted the IDEA to address insufficiencies in the prior education act for disabled students.[36] Of those insufficiencies was the prior act's failure to encourage parental involvement. To address that, an explicit goal of the IDEA proposed "strengthening the role and responsibility of parents and ensuring that families of such children have *meaningful opportunities to participate* in the education of their children at school and at home."[37] Congress further described baseline safeguards in the IDEA aimed at providing parents that opportunity—Section 1415(b) entitles parents "'to examine all relevant records with respect to the identification, evaluation, and educational placement of the child,' to obtain an independent educational evaluation of the child, to notice of any decision to initiate or change the identification, evaluation, or educational placement of

30. *Id.*
31. *Id.* (quoting Hearing Officer Decision).
32. *Id.* at *16–18.
33. *See id.* at *36–38.
34. *Id.* at *39.
35. *Id.* at *74.
36. 20 U.S.C. § 1400(c)(2).
37. *Id.* § 1400(c)(5)(B) (emphasis added).

the child, and to present complaints with respect to any of the above."[38] Nevertheless, it remains uncertain whether or not the average special needs parent knows of these safeguards or understands what they mean.

The United States Supreme Court has provided limited guidance on the specific entitlements of parents that ensure they receive a meaningful opportunity to participate in their child's education. The Court has outlined some broad direction, such as affirming that the "IDEA includes provisions conveying rights to parents as well as to children."[39] However, much of the Court's discussion regarding what those rights are is narrow and confined to recitations of the mandated provisions in Section 1415(b).[40]

One of the IDEA provisions that courts have consistently interpreted strictly concerning parent participation is their right to an independent educational evaluation ("IEE") of their student at the school's expense.[41] This evaluation is predicated by parents' dissatisfaction with the school's evaluation and gives them access to an expert,[42] who in theory, can better inform parents on the materials made available by the school[43] and may help identify areas where the IEP is lacking or determine why the child is not progressing.[44] In dicta, the Court cites this provision to reassure that "[parents] are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition."[45] But in reality, that assurance is empty as it overlooks the numerous preliminary steps required to reach that point—steps that the average parent is likely unaware of.

III. COURT'S DECISION

The United States District Court had its opportunity to expound on what meaningful participation looks like when the Beers argued USD 512 denied a FAPE to their child. On appeal, the Court agreed with the Beers and affirmed the Review Officer's position that USD 512 both procedurally and substantively violated the IDEA, resulting in denial of a FAPE to the

38. Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368–69 (1985) (quoting 20 U.S.C. § 1415(b)).

39. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 529 (2007).

40. *See* Florence Cnty. Sch. Dist. Four v. Carter *ex rel.* Carter, 510 U.S. 7, 10 (1993) (discussing parents' procedural rights under the Individuals with Disabilities Education Act ("IDEA")); Dellmuth v. Muth, 491 U.S. 223, 225 (1989) (stating parents have the right to participate in their child's individualized education program ("IEP")); *Burlington*, 471 U.S. at 368–69 (reciting parents' general rights to examine their child's school records and file complaints regarding any Section 1415(b) provision).

41. Schaffer v. Weast, 546 U.S. 49, 53 (2005).

42. *Id.* at 60–61.

43. *Id.*

44. Karah Kemmerly, *Independent Educational Evaluations (IEE) 101*, UNDIVIDED (Oct. 9, 2023), https://undivided.io/resources/independent-educational-evaluations-iee-101-1213 [https://perma.cc/EUZ5-L9FZ].

45. *Schaffer*, 546 U.S. at 61.

Beers' child.[46] Substantively, USD 512 "failed to communicate critically important information" about their child's initial evaluation.[47] Instead of providing the Beers everything they possessed, USD 512 omitted information from documents and even altered some of the child's scores, making it appear he was doing better in school.[48] Overall, the evidence showed that USD 512 withheld information that would have given the Beers a clearer understanding of their child's performance and behaviors in school.[49]

Providing further support for its holding, the court concluded the finalized IEP contained vague, undefined terminology despite IDEA's requirement that IEPs serve as a "natural source of guidance."[50] This ambiguity led to the breakdown in communication between school staff and the Beers to the child's detriment.[51] Ultimately, the school's failure to communicate with and failure to provide the Beers with definitions for the vague terms prevented the Beers "from participating fully, effectively, and in an informed manner in the development" of the IEP.[52]

Despite the court's effort to address these substantive issues, a more critical analysis reveals they did not go far enough in pinpointing the complete scope of the problem. In the subsequent section, this comment delves into what the court overlooked, shedding light on the inadequacies that persist in the way the IDEA actually unfolds.

IV. COMMENTARY

The law as it is currently written is intended to allow families of special needs children to be fully informed to effectively participate in their child's education. The IDEA deems any hindrance or inability of parents to participate as grounds for the denial of a FAPE.[53] The court has broad discretion to award "appropriate" relief upon its finding of a denial "in light of" the Act's purpose to ensure special needs children receive FAPEs.[54] Yet, conspicuously absent from both the IDEA and caselaw is a clear framework of how to ensure meaningful participation.

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46. Beer v. USD 512 Shawnee Mission, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *3 (D. Kan. Mar. 17, 2023).
47. *Id.* at *44 (quoting Hearing Officer's Decision).
48. *Id.* at *45.
49. *Id.*
50. *Id.* at *65 (quoting Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 501 (2017)).
51. *Id.* at *76.
52. *Id.* (quoting Amanda J. *ex rel.* Annette J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 894 (9th Cir. 2001)).
53. *Id.* at *87.
54. *Id.* at *88.

Procedurally, the IDEA requires notice to "fully [inform] the parents, in the parents' native language. unless it clearly is not feasible to do so[.]"[55] This provision lent itself to the District Court's inference that the Beers not only needed the relevant educational information, but the information needed to be comprehensible.[56] While the court was ultimately correct in its analysis of the facts of this case and its outcome, both the court and the IDEA itself tend to presume a preliminary component in SPED cases—the average parent's understanding of statutory language and its interaction with their rights. This presumption inadvertently perpetuates a form of educationism, implying an assumed level of legal and educational knowledge that many adults do not have access to.[57]

Educationism refers to the bias that those with higher levels of education may have against those with less formal education.[58] Statutes, courts, and other law often reinforce this bias by employing complex language and presuming legal knowledge, which makes them very difficult for the average person to understand.[59] The IDEA is no exception. The statute takes up around 750 pages of the United States Code[60] and has a Kincaid readability score below thirty, meaning its language is best understood by college graduates.[61] Frustrated, the Beers resorted to social media for an explanation of the IDEA's procedural requirements as they began pursuing legal action against USD 512 because they were "really confused with the process of things."[62]

It is no secret those uninitiated into special education are overwhelmed with the complicated nature of this area of law. Admittingly, it even confuses courts and schools.[63] But what is overlooked is that courts and schools typically possess a higher level of education than the average parent. This creates a significant disparity in understanding and consequently, participating in the process. So, while courts may

55. 20 U.S.C. § 1439(a)(7).

56. *See Beer*, 2023 U.S. Dist. LEXIS 45822, at *24 (citing Bd. of Educ.v. Michael M., 95 F. Supp. 2d 600, 606 (S.D. W. Va. 2000) (holding that expertise is needed to fully understand the "nebulous" requirements of the IDEA)).

57. Melissa Hogenboom, *Educationism: The Hidden Bias We Often Ignore*, BBC (Dec. 20, 2017), https://www.bbc.com/future/article/20171219-the-hidden-judgements-holding-people-back.

58. *Id.*

59. Steven Lubet, *Why Are Laws So Long and Complicated?*, THE HILL (June 29, 2022, 8:00 AM), https://thehill.com/opinion/judiciary/3540423-why-are-laws-so-long-and-complicated/.

60. Kelly O. v. Taylor's Crossing Pub. Charter Sch., No. 4:12-cv-00193-CWD, 2013 U.S. Dist. LEXIS 120444, at *20 (D. Idaho Aug. 21, 2013).

61. See PREPOSTSEO, https://www.prepostseo.com/readability-checker [https://perma.cc/7X8L-553N] (last visited Jan. 23, 2024). The Kincaid grade level readability formula analyzes and rates text based on a United States grade school educational level. The formula uses the average number of words per sentence and the average number of syllables per word to generate a result that indicates how difficult an English passage is to understand.

62. Beer v. USD 512 Shawnee Mission, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *33 (D. Kan. Mar. 17, 2023) (quoting Natalie Beer's testimony).

63. *Kelly O.*, 2013 U.S. Dist. LEXIS 120444, at *20.

acknowledge the complexity of the statute or congratulate parents' attempts at navigating the terminology, they further reinforce the educationism ingrained in the IDEA by ignoring the disparity and perpetuating the barrier to meaningful participation.

7.3 million or 15% of all public school students receive SPED services under the IDEA.[64] Although exact statistics on the educational background of parents with children receiving SPED services is not readily available, it is well established that a significant proportion of children in these programs come from households where higher education levels are not prevalent.[65] This drastically inhibits parents' ability to understand the nuances and intricacies of SPED. Additionally, many disabilities that IEPs accommodate are genetic disabilities, like dyslexia, where approximately 40% of siblings, children, or parents will also be dyslexic,[66] thus further lowering the probability that these parents are well-equipped to read and comprehend the 750 annotated pages of the IDEA in order to fully and meaningfully participate in their child's education.

This issue persists among college-educated parents as well. At least one parent in *Beer* was a college-educated, able-minded individual,[67] which likely aided in her knowing how to begin the due process complaint. But even so, as noted above, she still expressed concern and confusion[68] with the process because this area of the law is so nuanced and is not presented in a manner easily digestible for the average person.

To address the educationsim in special education and allow the IDEA to work as intended, there must be structural change to the IDEA to enhance parents' accessibility. In its present form, the nearly 100 sections[69] of the IDEA is intimidating and inaccessible for the average parent and at times, even courts and school officials. The unintended result is costly, both socially and literally.[70] A study done by Janice Redish found that when the United States Department of Education redrafted its regulations to correct

64. NAT'L CTR. FOR EDUC. STATS., STUDENTS WITH DISABILITIES, *in* THE CONDITION OF EDUCATION 1–2 (May 2023), https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities [https://perma.cc/GX5W-BMA6].

65. NAT'L CTR. FOR EDUC. STATS., CHARACTERISTICS OF CHILDREN'S FAMILIES, *in* THE CONDITION OF EDUCATION, *supra* note 63, at 1, https://nces.ed.gov/programs/coe/pdf/2023/cce_508.pdf [https://perma.cc/PP5U-RA5U] (citing research that 45% of children in the United States live in a household where neither parent had any college education).

66. Sheryl Handler & Water M. Fierson, *Learning Disabilities, Dyslexia, and Vision*, 124 PEDIATRICS 837, 838 (2009).

67. *See* Natalie Beer, LINKEDIN, https://www.linkedin.com/in/nataliemyers/ [https://perma.cc/P933-KJRP] (last visited Jan. 23, 2024).

68. Beer v. USD 512 Shawnee Mission, No. 21-2365-DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *33 (D. Kan. Mar. 17, 2023).

69. Kelly O. v. Taylor's Crossing Pub. Charter Sch., No. 4:12-cv-00193-CWD, 2013 U.S. Dist. LEXIS 120444, at *20 (D. Idaho Aug. 21, 2013).

70. Susan Krongold, *Writing Laws: Making Them Easier to Understand*, 24 OTTAWA L. REV. 495, 502 (1992).

their unclear language, the Department "saved the time and money needed to write a separate grants announcement, eliminated duplicative paperwork, and eliminated the possibility of legal errors that might have arisen in translating the regulations into guidelines."[71] Redrafting the IDEA and thus allowing the law to "communicate its contents to the people who need to know and understand it"[72] is in society's best interests as it is demanded by fairness and logic. But until that happens, there are other attainable measures.

First, in addition to the mandated IEP meetings schools must have with parents, there should be quarterly, voluntary "refresher" trainings for school staff and parents of special needs children. The substance would include interpretation of the IDEA, direction on how to better facilitate communication between parents and the school, and insight on the legal options parents have when they are unhappy with their child's education. Leading these meetings would be a third-party expert in the field, such as those who conduct IEEs. If parents are unable to attend these meetings, a digital recording should be available for them.

Second, schools should provide a basic, plain language booklet that summarizes the main points of the IDEA including tips for parents on participating in IEP meetings. Because 65% of the population are visual learners,[73] concepts from this booklet should be made into graphics advertised in areas open to parents, reiterating the role they play in their child's education and what the IDEA entitles them to.

Implementing these proposed measures would significantly enhance the collaboration between parents and schools in the area of special education. The trainings and booklets would not only empower parents with crucial knowledge but also foster a more inclusive and supportive education environment for special needs children. By utilizing these, schools can effectively bridge the gap perpetuating educationism in public school SPED and ensure parents are fully equipped to advocate on their children's behalf in accordance with the IDEA.

V. CONCLUSION

While the court in *Beer* rightly emphasized how parents' lack of meaningful participation can lead to the denial of a child's FAPE, the court engaged in educationism by prematurely assuming average parents' ability

71. *Id.* at 503 (quoting Janice C. Redish, HOW TO WRITE REGULATIONS (AND OTHER LEGAL DOCUMENTS) 9 (1983)).

72. *Id.* at 502.

73. Soyiba Jawed, Hafeez Ullah Amin, Aamir Malik & Ibrahima Faye, *Classification of Visual and Non-visual Learners Using Electroencephalographic Alpha and Gamma Activities*, FRONTIERS IN BEHAV. NEUROSCIENCE, Aug. 2019, at 2.

to understand the "nebulous" intricacies of SPED law and the IDEA itself. Nonetheless, the Kansas court can be commended for delving into the parental participation requirement of IDEA in greater detail than we have seen before. This could signal a positive shift towards more comprehensive discussions about special education, and if this trend continues, we can anticipate legislation regarding enhancing the accessibility of the IDEA and a clearer meaning to meaningful participation.