APPELLANTS PRO SE

Jennifer Reinoehl
Jason Reinoehl
Granger, Indiana

ATTORNEYS FOR APPELLEES

Amy M. Steketee
Church Church Hittle & Antrim
Fort Wayne, Indiana

Alexander P. Pinegar
Kevin S. Smith
Church Church Hittle & Antrim
Noblesville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Jennifer Reinoehl and Jason Reinoehl,

Appellants-Plaintiffs,

v.

St. Joseph County Health Department, Dr. Robert M. Einterz, Dr. Mark D. Fox, and Penn-Harris-Madison School Corporation,

Appellees-Defendants.

December 3, 2021

Court of Appeals Case No. 21A-CT-433

Appeal from the St. Joseph Circuit Court

The Honorable John E. Broden, Judge

Trial Court Cause No. 71C01-2011-CT-443

Baker, Senior Judge.

Introduction

[1] Parents across Indiana and the United States faced enormous challenges during the uncertainty and fluid state of affairs caused by the COVID-19 pandemic, particularly at its onset. Not only were the safety, health and employment of loved ones a concern as the country and our state entered lockdown conditions, but the educational needs of their children was a concern as well. The dynamics of family life, school life, and work life converged in family households during this unique time in our history, with parents taking on multiple roles at home—parent/employee/teacher's assistant—while educators used their creativity in providing instruction to the state's children through the use of technology. Government and business leaders, health care workers, and educators also scrambled to address the enormous disruptions presented by the pandemic. Some of those disruptions to normalcy remain today.

[2] Jennifer and Jason Reinoehl (the Reinoehls) are the parents of S.R. and L.R., two high-school aged children with diagnoses that require adjustments to their educational instruction even during "normal" times. The Reinoehls' experiences during the onset of the COVID-19 pandemic are likely similar to those of other parents of children with disabilities. Today we discuss their disagreement with how their state and local governments, as well as their children's school system, responded to the COVID-19 pandemic, the impact those decisions had on their children, and the trial court's thoughtful and patient approach to hearing out the Reinoehls' frustrations, expressing genuine

compassion for them, while tasked with informing them that they had no legal remedy for their troubles.

Statement of the Case

[3] The Reinoehls appeal from the trial court's order granting a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6) filed by the St. Joseph County Health Department (Health Department), Dr. Robert M. Einterz, Dr. Mark D. Fox, and Penn-Harris-Madison School Corporation (the School Corporation). The Reinoehls seek review of the court's order and their issue statement is threefold. First, they contend the court abused its discretion by failing to consider case law they submitted. Next, they claim the court abused its discretion by preventing them from obtaining discovery and denying them a jury trial on the merits. Last, they contend the court erred by granting the motion to dismiss without first allowing them the opportunity to further amend their complaint. Finding that the trial court's thoroughly written order, which greatly aided appellate review of the issues, properly decided the matter before it, we affirm.

Issues

[4] The following restated issues arise from the Reinoehls' claims:

> I. Did the Reinoehls' Amended Complaint state an actionable claim of "failure to accommodate" under Section 504

of the Rehabilitation Act[1] (Section 504) and Title II of the Americans with Disabilities Act[2] (ADA), challenging the School Corporation's response to the COVID-19 pandemic as respects their daughters' educational needs?

II. Did the holding in *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) require the Reinoehls to exhaust their administrative remedies required by the Individuals with Disabilities Education Act[3] (IDEA) before filing their claim under Section 504 and Title II because their claim alleged a denial of a "free and appropriate public education"(FAPE)?

III. Does a private cause of action exist such that private citizens can sue county health departments alleging a violation of Governor Holcomb's Executive Order 20-02, and if so, did the Health Department violate Executive Order 20-02 by recommending that schools be closed to in-person instruction due to the pandemic?

IV. Did the Health Department's and School Corporation's respective actions–recommending and closing schools to in-person instruction–violate the Indiana Home Rule Act, by

---

[1] *See* 29 U.S.C. § 794 ("Nondiscrimination under Federal grants and programs. (a) No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."); PL 93-112, 1973 HR 8070 ("SEC. 504. NO OTHERWISE QUALIFIED HANDICAPPED INDIVIDUAL IN THE UNITED STATES, AS DEFINED IN SECTION 7(6), SHALL, SOLELY BY REASON OF HIS HANDICAP, BE EXCLUDED FROM THE PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANIAL ASSISTANCE.").

[2] 42 U.S.C. §12101 *et seq.* (Title II of the ADA) ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."). 42 U.S.C. § 12132.

[3] 20 U.S.C. § 1400 *et seq.* (2010). The purposes of IDEA include ensuring "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]" 20 U.S.C. § 1400(d)(a)(A).

preventing the Indiana Department of Education (IDOE) from fulfilling its statutory duty?

V. Did the Reinoehls' Amended Complaint state legally cognizable claims of "procedural due process," "substantive due process," and "equal protection" violations based on the Health Department's recommendations and the School Corporation's decision to follow those recommendations regarding in-person instruction?

VI. Did the Indiana Tort Claims Act (ITCA) bar the Reinoehls' negligence claims against Dr. Einterz and Dr. Fox because their recommendations against in-person instruction were made within the scope and course or their employment?

VII. Did Governor Holcomb's Executive Order 20-02 require Dr. Einterz and Dr. Fox to follow CDC guidelines, and, if so: did the Reinoehls' Amended Complaint plead facts showing that they failed to do so, and, if so, did that failure create a legally cognizable duty owed to the Reinoehls such that it could support a common-law negligence claim?

VIII. Did the court abuse its discretion by dismissing the Reinoehls' Amended Complaint without giving them the opportunity to engage in discovery?

IX. Did the court abuse its discretion by dismissing the Reinoehls' Amended Complaint without offering them the opportunity to file a Second Amended Complaint, where such opportunity had not been requested and further amendment would not have cured the legal deficiencies of their claims?

Facts[4] and Procedural History

[5] In January 2020, the World Health Organization declared the COVID-19 outbreak a public health emergency of international concern. Two months later, the President of the United States declared the COVID-19 outbreak a national emergency. That year, Indiana residents including those in St. Joseph County observed increases in COVID-19 infections, with a spike in cases in the last quarter of the year. *See* CDC COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#cases totaldeaths (last accessed November 23, 2021); Indiana COVID-19 Data Report, https://www.coronavirus.in.gov/2393.htm (last accessed November 23, 2021); *see also* Appellants' App. Vol. 2, p. 216.

[6] Governor Holcomb responded to this crisis by issuing executive orders to help Hoosiers navigate the crisis brought on by the COVID-19 pandemic. He began by first issuing Executive Order 20-02 on March 6, 2020, declaring a public health emergency. Next followed a series of executive orders which addressed, in part, public instruction in Indiana. Two orders directed all schools offering instruction from kindergarten through high school to close and cease in-person instruction, cancelled all state-mandated assessments for the 2019-2020 academic year, and directed that schools provide instruction via remote

---

[4] The facts recited are drawn from the Reinoehls' Amended Complaint and facts that are not subject to reasonable dispute because they are generally known within the trial court's jurisdiction and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Ind. Evidence Rule 201(a). In doing so, we accept the Appellees' invitation to take judicial notice of such facts.

learning, and keep the school buildings closed for the remainder of that school year.[5]

[7] On May 1, 2020, the Governor issued Executive Order 20-26 providing a roadmap for reopening businesses, government, and other aspects of the Indiana economy. In that order, Governor Holcomb established that,

> 3. Current Assessment of the Impact of COVID-19 for the Reopening of Indiana
>
> * * * *
>
> e. As set forth in ¶¶ 35 & 36, *unless otherwise specified, nothing in this Executive Order prohibits a county from imposing more stringent requirements than this Executive Order requires.*
>
> * * * *
>
> 35. No Limitation on Authority
>
> Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State, any local health department, or any other proper entity from ordering: (a) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency; or (b) any closure of a specific location for a limited period of time, including the duration of this public health emergency.
>
> 36. Local Declarations of Emergency
>
> a. Pursuant to the Emergency Disaster Law, no local ordinance, directive, or order of any county, political subdivision, or other local government entity pertaining to this public health

[5] See Executive Orders 20-05 (https://www.in.gov/gov/files/EO_20-05.pdf) and 20-16 (https://www.in.gov/gov/files/Executive Order 20-16 Education.pdf).

> emergency, may contradict or impose less restrictive requirements than those set forth in this Executive Order, or else that ordinance, directive, or order will be void and of no force or effect. However, unless prohibited by an Executive Order, local ordinances, directives, and orders may be more restrictive.
>
> * * * *

Executive Order 20-26, https://www.in.gov/gov/files/Executive-Order-20-26-Roadmap-to-Reopen-Indiana.pdf (last accessed November 18, 2021) (emphasis added).

[8] Further Executive Orders issued by the governor contained similar language, not prohibiting local governmental entities from imposing more stringent requirements than those of the executive orders.[6]

[9] After St. Joseph County had its first confirmed case of COVID-19 and in response to the statewide declaration of a public health emergency, Penn High School (PHS) began providing extended eLearning to its students on March 17, 2020. COVID-19 Extended eLearning Update (3.17.20), https://www.phmschools.org/parents/mar-2020/covid-19-extended-elearning-update-31720 (last accessed November 18, 2021). PHS teachers used Mondays

---

[6] *See* Executive Orders 20-28 (https://www.in.gov/gov/files/Executive Order 20-28 (Reopen Stage3).pdf) (2.c.), 20-32, (https://www.in.gov/gov/files/Executive Order 20-32 (Stage 4).pdf) (2.b), 20-36, (https://www.in.gov/gov/files/Executive Order 20-36 (Continuation Stage 4.5).pdf) (1.3), 20-39, (https://www.in.gov/gov/files/Executive-Order-20-39-2nd-Extension-Stage-4.5.pdf) (1.d), 20-42, (https://www.in.gov/gov/files/Executive-Order-20-42-30-day-extension-of-4.5-and-Mask-Mandate.pdf) (3.a.), 20-43, (https://www.in.gov/gov/files/Executive-Order-20-43-Stage-5-The-New-Normal-w-Mask-Mandate.pdf) (1.e), 20-50 (https://www.in.gov/gov/files/Executive-Order-20-50-Continuation-of-Color-Coded-County-Assessments.pdf) (1.b.), 20-53 (https://www.in.gov/gov/files/Executive -Order-20-53-EXt-of-20-50-Cont.-of-Color-Coded-County-Assessments.pdf) (3.).

to plan eLearning lessons for the week and then taught students through video-conferenced classes on Tuesday through Friday. *Id.* The School Corporation closed its buildings through the end of the 2019-2020 school year, in compliance with Executive Order 20-16. PHM School Year Update (4.2.20), https://www.phmschools.org/parents/apr-2020/phm-school-year-update-4220 (last accessed November 18, 2021).

[10] The School Corporation's 2020-2021 re-entry plan for the school year initially was to provide students with options for in-person and virtual learning. However, on July 30, 2020, the School Corporation notified parents that the Health Department, after considering current Coronavirus activity and community transmission, had recommended that schools in the county "open in a virtual learning environment." Appellant's App. Vol. 2, p. 120. The School Corporation, including PHS, began the 2020-2021 school year providing virtual instruction to all students. *See* Return to School Update (8.4.20). https://www.phmschools.org/news/aug-2020/return-school-update-august-4-2020 (last accessed November 23, 2021). On August 31, 2020, the School Corporation approved a plan for families with students wanting to attend school in person.

[11] The Reinoehls are the parents of two teenaged children who attend PHS. Both S.R. and L.R. have been diagnosed with ADHD and depression. S.R. also has

been diagnosed with anxiety. They attend PHS under Section 504 Plans[7] that provide for them to receive accommodations to their physical environment. Those accommodations include among other things: 1) seating in the front of the room where the instructional presentation is easily visible; 2) seating in an area free from distractions; 3) a reduction of classroom distractions; and 4) seating away from main traffic areas. Appellant's App. Vol. 2, pp. 58, 62.

[12] All PHS students, including S.R. and L.R., finished the 2019-2020 year and began the 2020-2021 school year receiving virtual instruction. Jennifer Reinoehl complained to School Corporation personnel, expressing her disagreement with PHS's virtual learning plan. She demanded that her children be allowed to attend school in-person or be provided what she called "traditional e-learning courses," meaning pre-recorded classes her children could watch on-line when they chose and "work at their own pace" and could "set their own learning schedule." *Id.* at 116.

[13] The School Corporation moved to a hybrid model beginning September 21, 2020, where PHS students, including S.R. and L.R., attended school in-person two days per week and attended virtual classes two days a week. S.R. and L.R.

---

[7] "A 'Section 504 Plan' is a plan developed to provide students with disabilities certain accommodations that would enable them to participate in the educational services and programs provided by the school. Such plans are implemented to ensure compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 794." *See McNulty v. Bd. of Educ. of Calvert Cnty.*, Civ. No. 03–2520, 2004 WL 1554401 at *1 n.2 (D.Md. July 8, 2004).

began attending school for in-person instruction four days per week beginning October 26, 2020.[8]

[14] Rates of positive COVID-19 cases in St. Joseph County grew, and the Health Department expressed concern about the spread of the Coronavirus with increased indoor family and social gatherings during the Thanksgiving and Christmas holidays. Responding to those concerns, on November 18, 2020, the School Corporation followed the recommendation of the Health Department that "high school classes [opt] to virtual learning until after winter break" and "middle school [classes] go virtual as well." *Id.* at 143. The School Corporation notified the parents of children within the school system that students would revert to 100 % virtual instruction between November 23, 2020, and January 15, 2021. The Reinoehls filed this action on November 25, 2020.

[15] On January 7, 2021, the School Corporation announced that all PHS students would return to a hybrid instruction model starting January 19, 2021. That instruction would provide students with virtual instruction three days a week and in-person classes two days per week. On February 8, 2021, the School

[8] In the Amended Complaint, the Reinoehls alleged that after Jennifer Reinoehl had sent an e-mail to PHS demanding that her children be allowed to attend school in-person four days a week, "only then [did PHS] notif[y] her that other parents with disabled children were already being allowed to do this." Appellants' App. Vol. 2, p. 164. However, the exhibits she cites in support of that allegation merely reflect PHS's approval for her children to attend school in-person four days per week. *See* Appellants' App. Vol. 2, pp. 124-25.

Corporation approved a plan that transitioned students including those at PHS from the hybrid model to full-time in-person instruction by April 12, 2021.

[16] The Reinoehls' original seven-count complaint against the Health Department, Dr. Fox, Dr. Einterz, and the School Corporation sought damages and a permanent injunction. The Reinoehls also filed a motion for a preliminary injunction. On December 17, 2020, they were granted leave to file their Amended Complaint in which they variously challenged the Health Department's recommendations regarding closure of schools and the School Corporation's decision to follow the Health Department's recommendations, seeking damages and declaratory and injunctive relief.

[17] The Health Department, Dr. Fox, Dr. Einterz, and the School Corporation (collectively the Defendants), filed a motion to dismiss all counts of the Reinoehls' Amended Complaint under Indiana Trial Rule 12(B)(6). After full briefing of the matter by the parties, on February 10, 2021, the court held a hearing at which the parties presented their arguments.

[18] Next, the trial court issued its meticulous nine-page order granting the Defendants' motion to dismiss. The court concluded its order by observing,

> Plaintiffs' Amended Complaint is detailed and it well articulates the hardships that millions of families have been forced to endure throughout this global Covid-19 Pandemic which has now entered its thirteenth month in the United States. Plaintiffs' Amended Complaint is particularly well-stated as to the unique hardships this Covid-19 Pandemic has imposed on school aged children in general and special needs children in particular as

> well as their parents. However, no matter how well stated Plaintiffs' Amended Complaint is as it relates to the hardships endured by both Plaintiffs and their children in this cause, that is different and distinct from stating an actionable, legal cause of action against Defendants Einterz, Fox, St. Joseph County Health Department, and Penn Harris Madison School Corporation. Therefore, Defendants' Motion to Dismiss Counts I through VII of Plaintiffs' Amended Complaint is GRANTED. Plaintiffs' Amended Complaint is DISMISSED.

Appellants' App. Vol. II, p. 20. This appeal ensued.

Discussion and Decision

Standard of Review[9]

[19] This appeal arises from the trial court's order granting the Defendants' motion to dismiss under Rule 12(B)(6). A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015). "When ruling on a motion to dismiss, the court must 'view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant's favor.'" *Id.* (quoting *Kitchell v. Franklin*, 997 N.E.2d 1020, 1025 (Ind. 2013)). We review a trial court's grant or denial of a Trial Rule 12(B)(6) motion de novo. *Id.* "We will not affirm such a dismissal 'unless it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances.'" *Id.* (quoting *City of E. Chicago, Ind. v. E. Chicago Second Century,*

[9] Where other issues involve different standards of review, we will set forth the appropriate standard of review in our discussion of the issue.

Inc., 908 N.E.2d 611, 617 (Ind. 2009)). We will affirm the trial court's ruling if it is sustainable on any basis found in the record. *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 518 (Ind. 2009).

I. Failure to Accommodate

[20] Although the Reinoehls' brief claims the court failed to consider caselaw submitted by them, the substance of their argument along those lines addresses the court's dismissal of Count III of their complaint. *See* Appellants' Br. pp. 14-33. Count III of the Reinoehls' Amended Complaint cited the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act (ADA) 42 U.S.C. § 12101 *et seq*. They claimed the School Corporation received federal funding under those programs, that their children had 504 Plans requiring a distraction-free learning environment, that their children were not offered "traditional e-learning," and that their home was not a "distraction free area." Appellants' App. Vol. 2, pp. 172-73.

[21] To begin the process of obtaining relief for an alleged IDEA violation, a plaintiff must first exhaust his administrative remedies by filing a due process complaint with the IDOE and have the issue adjudicated by an Independent Hearing Officer. *See Stanley v. M.S.D. of Sw. Allen Cnty. Schs.*, 628 F. Supp. 2d 902, 980 (N.D. Ind. 2008); 20 U.S.C. §§ 1415(i)(2), 1415(l); 511 Ind. Admin. Code §§ 7-45-7, 7-45-9. The Reinoehls' Amended Complaint did not allege that they had exhausted their administrative remedies. On appeal, the Reinoehls concede that their children do not qualify for IDEA benefits. *See* Appellants'

Br. p. 14 ("Since all parties agree the Reinoehls' children do not qualify for IDEA, the Reinoehls do not need to exhaust IDEA Administrative remedies."). The court did not err by dismissing Count III allegations based on an IDEA violation.

[22] Next, we turn to the trial court's dismissal of Count III's allegations under Title II of the ADA and Section 504. Both provisions similarly prohibit the exclusion of or discrimination against otherwise qualified individuals with disabilities from the benefits of services, programs, or activities of a public entity. *See Prakel v. Indiana*, 100 F. Supp. 3d 661, 680 (S.D. Ind. 2015) (citing 42 U.S.C. § 12132; 29 U.S.C. § 794(a)). Section 504 also requires that the public entity receive federal funding. 29 U.S.C. § 794.

[23] Courts generally construe Title II and Section 504 consistently given their similarity. *See Prakel*, 100 F. Supp. 3d at 680. Consequently, to establish disability discrimination under both Acts, the Reinoehls were required to allege facts showing that: "(1) [the School Corporation] intentionally acted on the basis of the disability, (2) [the School Corporation] refused to provide a reasonable modification, or (3) [the School Corporation's] rule disproportionally impact[ed] disabled people." *See CTL ex rel. Trebatoski v. Ashland Sch. Dist.*, 743 F.3d 524, 528-29 (7th Cir. 2014) (internal quotations omitted). "Accommodations are only . . . required when necessary to avoid discrimination on the basis of a disability." *Id.*

[24] Turning to the assertions in the Reinoehls' Amended Complaint, the allegations against the School Corporation were that when it chose to provide real-time virtual classes during the 2020-2021 school year, it unlawfully failed to accommodate their children's disabilities by providing in-person instruction, or what they described as traditional e-learning. The Reinoehls stated that those accommodations were necessary because:

> (1) the Reinoehls' children had Section 504 Plans in place requiring the School Corporation to provide a learning environment that "reduce[d] classroom distractions[;]" and
>
> (2) the School Corporation's replacement of in-person learning with virtual learning was in violation of this requirement because the Reinoehls "live in a ranch home with about 1,200 square feet of above ground space with their 5 children (ranging in age from 5 years old to 20 years old) and 3 pets, including a guinea pig who frequently squeals to get attention for 5 minutes or more."

See Appellants' App. Vol. 2, p. 163.

[25] Here, the Reinoehls' Amended Complaint did not allege facts showing that the School Corporation intentionally discriminated against their children because of their disabilities. Nor did the Amended Complaint allege facts showing that the School Corporation's virtual instruction plan disproportionately impacted students with disabilities. Instead, the Amended Complaint alleged that the School Corporation did not provide the kind of schooling the Reinoehls preferred for their children.

[26] For a failure to accommodate claim to be established, the Reinoehls needed to allege that the accommodation that they requested was reasonable. *See A.H. v.*

Ill. High Sch. Assoc., 881 F.3d 587, 592 (7th Cir. 2018). They must also allege that the School Corporation's refusal to provide the accommodation "effectively denied [their children] the benefit of a public education." *CTL ex rel. Trebatoski*, 743 F.3d at 529-30.

[27] The Amended Complaint set forth facts establishing that the Reinoehls disagreed with the School Corporation's virtual learning instructional plan for all students and that their request for a unique method of instruction for their children was not implemented. The Reinoehls failed to allege that the accommodations they sought would not "result in a fundamental alteration of service or impose an undue burden." *See Meyer v. Walthall,* 528 F. Supp. 3d 928, 958 (S.D. Ind. 2021). Indeed, the Amended Complaint alleged that they did not seek a modification of the School Corporation's virtual instruction, but in-person instruction or pre-recorded lessons, a completely different form of instruction.

[28] The United States Court of Appeals for the Seventh Circuit observed in *A.H.* that Section 504 and Title II of the ADA require schools to provide disabled students with equal opportunities, though the disabled students may not obtain equal results. 881 F.3d at 596. The Reinoehls' Amended Complaint acknowledges that their children were provided with virtual instruction. Thus, they were not denied a public education.

[29] As for whether the Reinoehls' children were *effectively denied the benefit* of a public education, we turn again to the allegations of the Amended Complaint.

The Reinoehls set forth facts establishing the difficulties they encountered while taking steps to ensure that their children availed themselves of the virtual instruction. They alleged variously, that Jennifer's work day was disrupted by monitoring her daughters' completion of the virtual instruction, frustration that the children slept through most of the instruction, and frustration with the household noises and activities of the family members and their pets. They also argued that they saw their children falling behind in their education.

[30] While the Reinoehls' children were in the classroom, the School Corporation was responsible under the 504 Plans for providing a distraction-free learning environment. There is no allegation in the Amended Complaint that this did not occur. The conditions at the Reinoehls' home were out of the School Corporation's control when the instructional plan switched to virtual instruction.

[31] The court's order best sums up the situation brought about by the COVID-19 pandemic:

> [W]hile [the School Corporation's] academic offerings did not consist of in-person learning, Count III of Plaintiffs' Complaint fails to allege or adequately articulate how [the School Corporation] denied their children a public education. To be sure, the realm of educational services offered during the Pandemic are not the equivalent of in-person learning . . . , but under the circumstances they certainly satisfy the requirement for the offering of a free public education under Indiana law.

Appellants' App. Vol. 2, pp. 14-15.

[32] The court correctly found that the Reinoehls had not pled facts supporting their claims and properly dismissed this allegation in Count III of their Amended Complaint.

II. FAPE

[33] The Reinoehls also argued in Count III that their children were denied the benefits of a free and public education. *See* Appellants' App. Vol. 2, pp 172-73. The Reinoehls included an IDEA violation in their Amended Complaint. This claim is brought under Section 504 and Title II of the ADA. In a prior section we discussed how the Reinoehls' claim failed in part due to their failure to exhaust their administrative remedies under IDEA. Here, under Section 504 and Title II, "plaintiffs are not required to exhaust their administrative remedies in order to bring discrimination claims under the FHAA, ADA, Rehabilitation Act, or Equal Protection clause of the Fourteenth Amendment." *See New Horizons Rehab., Inc. v. State*, 400 F. Supp. 3d 751, 762 (S.D. Ind. 2019). However, as the U.S. Supreme Court held,

> Section 1415(l) requires that a plaintiff exhaust the IDEA's procedures before filing an action under the ADA, the Rehabilitation Act, or similar laws when (but only when) her suit "seek[s] relief that is also available" under the IDEA. We first hold that to meet that statutory standard, a suit must seek relief for the denial of a FAPE, because that is the only "relief" the IDEA makes "available." We next conclude that in determining whether a suit indeed "seeks" relief for such a denial, a court should look to the substance, or gravamen, of the plaintiff's complaint.

Fry, 137 S. Ct. at 752.

[34] As defined by IDEA, a FAPE comprises "special education and related services"–both "instruction" tailored to meet a child's "unique needs" and sufficient "supportive services" to permit the child to benefit from that instruction. *Id.* (quoting §§ 1401(9), (26), (29); *Board of Ed. of Hendrick Hudson Central Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 203 (1982)). We turn to the Reinoehls' Amended Complaint to determine whether they were required to first exhaust their remedies under IDEA based on the gravamen of their allegations.

[35] The *Fry* Court provided us with two hypothetical questions to aid in that determination.

> 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–say, a public theater or library? And second, could an adult at the school–say, an employee or visitor–have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject; after all, in those other situations there is no FAPE obligation and yet the same basic suit could go forward. But when the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.

Id. at 756.

[36] Here, the Amended Complaint alleged the denial of a FAPE because their children are disabled students. The facts set forth in the Amended Complaint relate to the Reinoehls' children's education and the Reinoehls' preference for

in-person instruction or pre-recorded instructional videos. The answer to the *Fry* Court's two hypothetical questions is no, and this portion of Count III was properly dismissed because the Reinoehls failed to exhaust their administrative remedies under IDEA.

[37] This decision is consistent with one issued in *Borishkevich v. Sprinfield Pub. Schs. Bd. of Educ.*, --- F. Supp. 3d ---, 2021 WL 2213237 at *6-*7 (W.D. Mo. May 27, 2021) (dismissal of challenge brought under Section 504 and Title II to the school's re-entry plan during the COVID-19 pandemic for failure to exhaust IDEA remedies), a case we discuss more fully later.

[38] The Reinoehls argue that the U.S. Court of Appeals for the Ninth Circuit's opinion in *McIntyre v. Eugene Sch. Dist. 4J*, 976 F.3d 902 (9th Cir. 2020), supports their argument that they were not required to exhaust their administrative remedies under IDEA. In *McIntyre*, the student had sought extra time and an alternative quiet location to take her exams in addition to a special emergency health protocol specific to her medical needs. The student experienced bullying by a teacher and other students in the school and the school failed to call 911 per the conditions of her health protocol after she fractured her ankle. The Court found that she was not required to exhaust her administrative remedies under IDEA because her requests did not involve FAPE, but access to a public institution. The *McIntyre* decision is distinguishable from the present case because the answer to the *Fry* Court's hypothetical questions was yes. The accommodations McIntyre sought equally applied to public facilities other than schools and by adults in schools or other

public facilities. The Reinoehls' sought accommodations unique to the classroom setting; therefore, they were required to exhaust their administrative remedies prior to filing suit. They admittedly did not.

III. Private Cause of Action

[39] In Count I of their Amended Complaint, the Reinoehls argued that the Health Department violated Governor Holcomb's Executive Order 20-02. The court found that it "can discern no action taken by the [Health Department] that can be construed as an actionable violation of Executive Order 20-02." Appellant's App. Vol. 2, p. 13.

[40] Indiana Code chapter 10-14-3 (2003), Indiana's Emergency Management and Disaster Law (EMDL), serves the purpose,

> to ensure that Indiana will be adequately prepared to deal with disasters or emergencies or to prevent or mitigate those disasters where possible, generally to provide for the common defense, to protect the public peace, health and safety, and to preserve the lives and property of the people of the state.

Ind. Code § 10-14-3-7(a). Additionally, the EMDL provides that "law enforcement authorities of the state and of the political subdivision shall enforce" the orders, rules and regulations issued under the chapter. Ind. Code § 10-14-3-24 (2003). "As a general rule, a private party may not enforce rights under a statute designed to protect the public in general and containing a comprehensive enforcement mechanism." *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1260 (Ind. 2000). Thus, Count I of the Reinoehls' Amended Complaint

was properly dismissed because they had no private right to enforce Governor Holcomb's Executive Order.

[41] Additionally, Executive Order 20-02 did not restrict the rights of the Health Department from issuing recommendations concerning school closures during the pandemic. The ISDH was required to follow the CDC's protocols and guidelines in connection with the spread of COVID-19. Local health officials were required to cooperate with the ISDH in response to the pandemic. The CDC press release offered by the Reinoehls, in which the Director said it "is critically important for our public schools to open this fall," was not a protocol or guideline, and any recommendation by the Health Department in contradiction of the press release was not in violation of Executive Order 20-02. *See* Appellants' App. Vol. 2, p. 118. The guidance offered by the CDC was that school officials should coordinate with local health officials. That is what happened as alleged in the Amended Complaint. The trial court did not err by dismissing Count I.

IV. Home Rule Act[10]

[42] Count II of the Reinoehls' Amended Complaint alleges that the Health Department (by recommending no in-person instruction) and the School Corporation (by following the Health Department's recommendation for several weeks of the 2020-2021 school year) violated Indiana's Home Rule Act.

---

[10] The Indiana Home Rule Act may be found at Indiana Code Chapter 36-1-3 (2019).

See Ind. Code § 36-1-3-8 (2019). The Home Rule Act prohibits local governmental units from "regulat[ing] conduct that is regulated by a state agency, except as expressly granted by statute." *See* Ind. Code § 36-1-3-8(a)(7). The Reinoehls' argument is that the IDOE has the statutory duty to publish a report that, among other things, includes statewide assessments scores. *See* Ind. Code § 20-32-5.1-16 (2017). The statewide assessment ILearn (formerly known as ISTEP) testing could not be conducted at home, especially during the relevant time period. Therefore, argue the Reinoehls, the recommendation by the Health Department which the School Corporation decided to follow, was all in violation of the Home Rule Act because it prevented the IDOE from fulfilling its statutory duty in the 2020-2021 school year.

[43] Indiana Code section 36-1-3-2 (1980) of the Home Rule Act provides that the "policy of the state is to grant units[11] all the power that they need for the effective operation of government as to local affairs." On its face, the Home Rule Act confers power to governmental units, and outlines rights between the state and local governmental units. The Defendants argue that the Home Rule Act does not confer a private right of action for an alleged violation. *See* Appellees' Br. p. 51. We said as much in *Town of Lapel v. City of Anderson*, 17 N.E.3d 330, 335 (Ind. Ct. App. 2014), where we held "The Home Rule Act

[11] A "unit" is defined as a "county, municipality, or township." *See* Ind. Code § 36-1-2-23 (1980).

does not afford a distinct cause of action to redress wrongs committed thereunder."

[44] Further, the Amended Complaint does not allege facts suggesting that the Defendants' actions invaded the province of the IDOE's authority or obligations to create a performance report. Executive Order 20-05 4.A. provided in part that "[a]ll state-mandated assessments are cancelled for the 2019-2020 academic year." Executive Order 20-05 (https://www.in.gov/gov/files/EO_20-05.pdf). The School Corporation followed the Health Department's recommendation and closed the schools. Thus, the court correctly determined that Reinoehls failed to allege facts in their Amended Complaint showing that the Defendants' actions amounted to a violation of Indiana Code section 35-1-3-8(a)(7) of the Home Rule Act.

V. § 1983–Due Process and Equal Protection

[45] Count IV of the Amended Complaint contains an assertion of claims under 42 U.S.C. § 1983 for 14th Amendment substantive and procedural due process and equal protection violations. The court dismissed the Reinoehls' claims, and we address them in turn.

a. Procedural Due Process

[46] As for the Reinoehls' due process claim, they chose not to challenge the court's dismissal of that claim in their opening brief. "Failure to raise an argument in the appellant's brief constitutes waiver." *Chrysler Motor Corp. v. Resheter*, 637 N.E.2d 837, 839 (Ind. Ct. App. 1994).

[47] Waiver notwithstanding, "The standard elements of a due process claim include whether the plaintiff suffered a deprivation of a cognizable property or liberty interest, and whether any such deprivation occurred without due process." *Honeycutt v. Ong*, 806 N.E.2d 52, 57-58 (Ind. Ct. App. 2004). "To establish a protectable property interest, a plaintiff must be able to point to a substantive state-law predicate creating that interest." *Id.* at 58. "The interest must be more than de minimis, which typically calls on the plaintiff to demonstrate some form of provable pecuniary harm." *Id.*

[48] Turning to the Amended Complaint, the Reinoehls alleged that the recommendations made by the Health Department and the School Corporation's decision to follow the recommendations were made without any "process" that allowed for "evaluation by a neutral arbitrator," "an opportunity to be heard," "an opportunity to present witnesses," "an opportunity to cross-examine witnesses," "a reasoned decision," or "an opportunity for appeal." *See* Appellants' App. Vol. 2, p. 176. However, the Reinoehls did not allege a cognizable property or liberty interest that was affected by the Health Department's recommendations and the School Corporation's decision to follow the recommendations. The court did not err.

b. Substantive Due Process

[49] Next, they argue substantive due process violations based on those same recommendations and decisions. "To set forth a claim for violation of substantive due process, a party must show (1) that the law infringes upon a fundamental right or liberties deeply rooted in our nation's history; or (2) that

the law does not bear a substantial relation to permissible state objectives." *Honeycutt*, 806 N.E.2d at 58. "To succeed, the party must demonstrate that the State's conduct is arbitrary and capricious." *Id.* "The State will prevail if any rational basis for its action can be hypothesized." *Id.*

[50] As for a fundamental right that has been infringed upon, the *Borishkevich* Court applied the test set out in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), in its decision addressing constitutional challenges which are made to state action taken in response to a public health crisis–in the *Jacobson* case, a smallpox epidemic. *See Borishkevich*, 2021 WL 2213237 at *3-*4. The United States Court of Appeals for the Eighth Circuit, *In Re Rutledge*, 956 F.3d 1018, 1028 (8th Cir. 2020) summarized the *Jacobson* holding by stating, "when faced with a public health crisis, a state may implement measures that infringe on constitutional rights, subject to certain limitations." *See Jacobson*, 197 U.S. at 26-27. As background for the basis of the test, the *Jacobson* Court explained that "the liberty secured by the Constitution of the United States . . . does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." *Id.* at 27. Instead, "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Id. "*Thus, while constitutional rights do not 'disappear' during a public health crisis, 'the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may

demand.'" *Borishkevich*, 2021 WL 2213237 at *3 (quoting *Jacobson*, 197 U.S. at 29).

[51] The *Jacobson* Court held that judicial review of legislative action under a public health crisis is only appropriate (1) "if a statute purporting to have been enacted to protect public health . . . has no real or substantial relations to those objects," or (2) the statute is "beyond all question, a plain, palpable invasion of rights secured by the fundamental law[.]" *Jacobson*, 197 U.S. at 31. The *Borishkevich* Court, applying the *Jacobson* test, held with respect to a parental substantive due process challenge to a school district's decision related to the COVID-19 pandemic, that parents "do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over the subject." 2021 WL 2213237 at *4.

[52] Indiana Code section 16-20-1-21(1993) provides that local health boards have the responsibility to take any action authorized by statute or rule to control communicable diseases. Indiana Code section 16-21-24 (1993) provides that local health officers may order schools closed and forbid public gatherings when necessary to prevent and stop epidemics. Additionally, Indiana Code section 20-26-5-1 (2017) provides for the general power of school corporations to conduct various educational programs. Indiana Code section 20-26-5-4 (2019) provides that the governing body of a school corporation has the power to "take charge of, manage, and conduct the educational affairs of the school corporation."

[53] The Reinoehls' Amended Complaint does not allege facts that would satisfy either of the showings required under *Honeycutt*. The Reinoehls argue that they have met that standard by asserting that 1) the School Corporation deprived them of accommodation due under Section 504 and Title II, and 2) the Health Department's recommendation "disparately and unjustly restricted [their] access to education for their children without correlation to the spread of the Covid-19 virus." *See* Appellants' Br. at 41. We agree with the *Borishkevich* Court's holding that with respect to a parental substantive due process challenge to a school district's decision related to the COVID-19 pandemic, parents "do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over the subject." 2021 WL 2213237 at *4. The trial court did not err.

c. Equal Protection

[54] As for the Reinoehls' equal protection claim, they present no argument in their brief challenging the court's decision to dismiss this part of Count IV. Consequently, the argument is waived. *See Chrysler Motor Corp.*, 637 N.E.2d at 839.

[55] Waiver notwithstanding, we first look to the Reinoehls' Amended Complaint. They claimed a violation of the Equal Protection Clause because "Plaintiffs with disabilities struggle to learn without accommodations, which have been taken away by school closures," the actions were "arbitrary and irrational," and the "decision to close schools impedes Plaintiffs' fundamental right to receive an education." Appellants' App. Vol. 2, pp. 177-78.

[56] "An equal protection violation occurs only when different legal standards are arbitrarily applied to similarly situated individuals." *Burreson v. Barneveld Sch. Dist.*, 434 F. Supp. 2d 588, 595 (W.D. Wis. 2006). "Absent either a fundamental right or a suspect class, a court need only apply a rational basis to review the challenged state action." *Smith v. Severn*, 129 F.3d 419, 429 (7th Cir. 1997).

[57] "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). Moreover, for purposes of the equal protection clause, persons with disabilities are not considered members of a "suspect class." *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 445-46 (1985). That leaves us with the rational basis review.

[58] "Classifications not involving a suspect class or fundamental right are reviewed under a rational basis standard." *Bennett v. State*, 801 N.E.2d 170, 175 (Ind. Ct. App. 2003). Under the rational basis standard, government action "carries with it a presumption of constitutionality that can only be overcome by a clear showing of arbitrariness and irrationality." *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 451 (1988).

[59] Once again, we look to guidance from the decision rendered by the *Borishkevich* Court, which stated the following about the subject:

> The Equal Protection Clause is implicated when the government treats two similarly-situated people differently, but the [school's COVID-19] Plan offered the same options to all students within the [school system]. Thus, Plaintiffs have not shown that the [school's COVID-19] plan discriminates against anyone at all.
>
> Moreover, . . . even if the [school's COVID-19] plan did discriminate, it easily passes rational basis scrutiny–preventing the spread of COVID-19 is certainly a legitimate government interest, and as discussed above, limiting in-person contact and enforcing social distancing are rationally related to that interest.

2021 WL 2213237 at *6. We find this argument compelling.

[60] Here, the Amended Complaint used the words "arbitrary" and "not rational." However, the Amended Complaint did not allege facts under which the court could have found that the Defendants' actions were arbitrary or irrational. Because the Defendants' actions furthered the governmental interest of protecting public health and treated the Reinoehls and their children no differently than anyone else, their equal protection claims failed to state a claim upon which relief could be granted. The court did not err.

VI. Indiana Tort Claims Act[12]

[61] Dr. Einterz and Dr. Fox (collectively, the Health Officers) were the two health officers of the Health Department. Count V of the Reinoehls' Amended Complaint alleged that the Health Officers, each in their individual capacities, were negligent by failing to "research CDC guidelines on school closures,"

---

[12] *See* Ind. Code Chapter 34-13-3 *et seq.* (1998).

causing the Reinoehls to "interrupt [their] workday to encourage S.R. and L.R. to do 'Virtual Learning'" and "suffer[] emotional distress from the inadequacy of the education their daughters were receiving." *See* Appellants' App. Vol. 2, pp. 179-80. The Health Officers argued that the acts alleged in the Amended Complaint were conducted within the scope of their employment under the Indiana Tort Claim Act (ITCA) and that the Reinoehls had failed to comply with ITCA's notice requirements. *See* Ind. Code § 34-13-3-3 (sovereign immunity); § 34-13-3-8 (notice).

[62] The court found that Count V should be dismissed because 1) the alleged acts of negligence against them as individuals fell within the scope of employment as employees of the Health Department, and 2) claims against them in their official capacities likewise should be dismissed as their governmental employer, the Health Department, was already named. *See* Appellants' App. Vol. 2, p. 18. We agree.

[63] Under the ITCA, "A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is . . . clearly outside the scope of the employee's employment." Ind. Code § 34-13-3-5(c)(2). "Indiana Code section 34-13-3-5(c) also authorizes a lawsuit to be filed against an employee personally if the plaintiff alleges the employee's act or omission is criminal, malicious, willful and wanton, or calculated to benefit the employee personally." *Burton v Benner*, 140 N.E.3d 848, 852 n.3 (Ind. 2020).

[64] Here, the Health Officers' recommendations to schools within their county regarding in-person learning during the global COVID-19 pandemic fall squarely within the scope of their employment. Further, the actions as alleged in the Amended Complaint do not constitute criminal, malicious, willful and wanton behavior, or behavior calculated to benefit them personally. The Reinoehls have not pleaded a reasonable factual basis to support those allegations. The court did not err.

VII. CDC Guidelines

[65] Next, the Reinoehls complain that the Health Officers' actions were negligent. However, the Reinoehls have not pleaded facts to support a negligence claim against the Health Officers because they have not pleaded a breach of any duty by the Health Officers. The tort of negligence consists of the elements of a duty owed the plaintiff by the defendant, a breach of that duty by the defendant, and injury to the plaintiff proximately caused by that breach. *See Kincade v. MAC Corp.*, 773 N.E.2d 909, 911 (Ind. Ct. App. 2002). The duty alleged by the Reinoehls was to follow Governor Holcomb's Executive Order 20-02, which they claim, "is a law regarding public health that establishes the CDC as the public health authority for Indiana Health Departments." Appellants' App. Vol. 2, p. 179. The Reinoehls alleged that the Health Officers breached that duty "by making recommendations contrary to CDC guidelines." *Id.*

[66] Executive Order 20-02 (1) "[d]esignate[s] the [Indiana State Department of Health (ISDH)] as the lead state agency to coordinate emergency response activities among the various state agencies and local governments"; (2) orders

"the ISDH to . . . follow CDC guidelines and protocols in connection with the control the [sic] spread of COVID-19;" and (3) orders "all state and local health officials . . . to cooperate with the ISDH in its response to the public health emergency and the implementation of this Executive Order." *Id.* at 67. The Reinoehls did not plead facts showing that the Health Officers failed to cooperate with the ISDH or that the ISDH issued guidance about in-person instruction which the Health Officers' recommendations violated. The Executive Order instructed the ISDH to follow CDC guidelines.

[67] Assuming arguendo that Executive Order 20-02 created a duty for the Health Officers to follow CDC guidelines, the facts pleaded, and the exhibits attached to the pleading, do not establish that the Health Officers' recommendations contradicted CDC guidelines. The Reinoehls' Exhibit 6 "Considerations for School Closure" does not mandate in-person instruction for the 2020-2021 school year. *See* Appellees' App. Vol. II, pp. 42-48. Exhibit 6 does state the CDC's instructions directing school officials to "[c]oordinate with local health officials" when there is "minimal to moderate or substantial community spread." *Id.* at 43. The Amended Complaint alleges that the School Corporation and the Health Department did just that. The court did not err by dismissing Count V.

VIII. Abuse of Discretion in Discovery

[68] Next, the Reinoehls assert that the court abused its discretion by rendering its decision on the merits without allowing them to obtain discovery and denying

them a trial by jury. *See* Appellants' Br. p. 33. The Defendants argue that the court correctly decided the matter under Rule 12(B)(6). We agree.

[69] As stated earlier, a motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. *See Thornton*, 43 N.E.3d at 587. We review a trial court's grant or denial of a Rule 12(B)(6) motion de novo. *Id.* We will affirm the trial court's ruling if it is sustainable on any basis found in the record. *Bonner*, 907 N.E.2d at 518.

[70] The Reinoehls needed to meet the requirements of Rule 12(B)(6) before any discovery efforts became relevant. "Discovery is the process by which litigants exchange information in order to ascertain unknown facts or to confirm evidence needed to prevail on their claim or defense." 22B Indiana Practice Series § 26:1 (April 2021 Update). There must have been a legally cognizable claim before any discovery became necessary. The same is true for the Reinoehls' request for a jury trial. The trial court did not err.

IX. Opportunity To File Another Amended Complaint

[71] Last, the Reinoehls argue that the court abused its discretion by dismissing their Amended Complaint without first giving them the opportunity to file a Second Amended Complaint. The Reinoehls offer that they are pro se litigants who do not have access to the same resources as a lawyer would have at a law firm and that they may have used some legal terms in a "non-standard way." Appellants' Br. p. 46. They contend that it would be a waste of time and resources to deny them the opportunity to correct any errors found in their

Amended Complaint and the court erred by dismissing their Amended Complaint.

[72] Under notice pleading, a party must disclose "only the operative facts involved in the litigation." *Palacios v. Kline*, 566 N.E.2d 573, 576 (Ind. Ct. App. 1991). This is to "place the defendant on notice as to the evidence to be presented at trial." *Id.* "There is no limitation on the court's discretion in permitting amendments merely because the cause of action or the theory of the complaint is changed." *Id.* "An abuse of discretion occurs where the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief." *Lake Cnty. Tr. No. 3190 v. Highland Plan Comm'n*, 674 N.E.2d 626, 628 (Ind. Ct. App. 1996), *trans. denied*.

[73] Initially, we observe that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). The court did not err by holding the Reinoehls to that standard. Additionally, the Reinoehls displayed experience in requesting and receiving permission to file an amended pleading, as this appeal is from a decision on their Amended Complaint. They had previously requested permission to amend their complaint and were granted leave by the court to do so.

[74] Next, they failed to request permission to further amend their complaint. At the hearing on the motion to dismiss, Jennifer Reinoehl stated, "If the plaintiffs need to amend their complaint[,] they prefer the Court tell them because they

believe the court is the neutral adjudicator and will not decide [sic] them." Tr. Vol. II, p. 20. This is not a statement requesting permission to amend the complaint. Indiana Code of Judicial Conduct Canon 2.2 provides that "[a] judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." Thus, under court rules, a judge's role as an impartial decision maker does not allow for offering legal advice to pro se litigants.

[75] In this case, the court did a tremendous job of navigating that fine line of upholding the law and facilitating the ability of all the litigants to be fairly heard, especially the Reinoehls, who appeared in court as pro se litigants. The court patiently and helpfully responded to Jennifer Reinoehls' requests for guidance during the hearing on the motion to dismiss. For instance, when referring to case law, Jennifer asked the court "do I just say like Coons v. Kaiser, or do I need to do 517 N.E.2d[?]" Tr. Vol. II, p. 9. After asking if the case was cited in her written submissions, the court responded, "you can just refer to the case. Frankly, even the first name is fine." *Id.* at 10. Jennifer also asked the court another procedural question, asking, "we prepared something together, and is it okay if I just read it for our part of our oral argument?" *Id.* at 9. The court agreed, responding "Sure." *Id.* The hearing concluded with the trial court's statement, thanking "the parties for their written offerings. And also for the oral arguments today, which are very helpful. So[,] thank you all very

much." *Id.* at 23. Each party was allowed to present their arguments to the court without interruption.

[76] The court's compassion for the Reinoehls' arguments was further expressed in its order, which we have previously set forth, but which bears repeating here.

> Plaintiffs' Amended Complaint is detailed and it well articulates the hardships that millions of families have been forced to endure throughout this global Covid-19 Pandemic which has now entered its thirteenth month in the United States. Plaintiffs' Amended Complaint is particularly well-stated as to the unique hardships this Covid-19 Pandemic has imposed on school aged children in general and special needs children in particular as well as their parents. However, no matter how well stated Plaintiffs' Amended Complaint is as it relates to the hardships endured by both Plaintiffs and their children in this cause, that is different and distinct from stating an actionable, legal cause of action against Defendants Einterz, Fox, St. Joseph County Health Department, and Penn Harris Madison School Corporation. Therefore, Defendants' Motion to Dismiss Counts I through VII of Plaintiffs' Amended Complaint is GRANTED. Plaintiffs' Amended Complaint is DISMISSED.
>
> Appellants' App. Vol. II, p. 20.

The court acted with fairness and compassion to the parties. Indeed, we find the court's handling of this matter to be a model of empathy to the plights of the litigants before it while impartially applying the law to the facts before it. We commend the court for its efforts.

[77] Additionally, we agree with the Defendants that the Reinoehls' Amended Complaint was dismissed because the legal bases for their claims were unavailable to them. The Amended Complaint was not dismissed because

improper procedure or improper legal terminology was used. The trial court did not err.

[78] Consequently, the court's decision to dismiss the Reinoehls' request for a declaratory judgment and injunctive relief was also proper.

Conclusion

[79] For all of the foregoing reasons, we affirm the decision of the trial court.

[80] Affirmed.

May, J., and Vaidik, J., concur.