

No. 28406—*Nancy S. Frankel v. Andrew H. Frankel*

McGraw, Chief Justice, dissenting:

FILED

July 25, 2001

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I find it perplexing that this Court can uphold a finding that there are no resources in Cabell County sufficient to permit William Frankel to overcome his learning disabilities, given the glaring fact that such county is home to Marshall University and its College of Education and Human Services. In effect, the Court has determined that West Virginia cannot provide an adequate education for William, but that Texas can. I find nothing in the record dictating such a drastic conclusion.

The public school system is legally obligated to provide the necessary special education services that William requires,¹ and it is patently obvious that such services are available in Cabell County. The proper remedy, if necessary, would be to mandate that the board of education provide William with an adequate education in light of his disabilities. Instead of adopting such a sensible approach to ensuring that the child's needs are met, the Court in this case has taken the simplistic path of awarding custody to the parent with the greater financial resources. I do not think that the Court fully realizes the mischief that such a result will work in the future, and I respectfully dissent.

¹See Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1491; Education of Exceptional Children Act, W. Va. Code §§ 18-20-1 to -9.