

Recent Cases & Their Implications Under IDEA, ADA & § 504

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U.S. SUPREME COURT CASES

- *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 2017 U. S. LEXIS 2047 (2017)
 - 5 yr. old student was prescribed a service dog to assist the student with certain tasks, i.e. her balance, picking up dropped items, open & close doors, turn on lights & other specific tasks;
 - The School refused stating that a human aide could be provided to assist the student during school hours;
 - Student's parents removed the student and began homeschooling her;
 - The Parents brought suit under the ADA and Section 504 of the Rehabilitation Act, not under IDEA

Cases Applying *Frye*

- *F.C. v. Tenn. Dept. of Educ. and Franklin City Spec. Sch. Dist.*, 117 LRP 11997 (M.D. Tenn. 2017); the court held that the plaintiffs were required to exhaust IDEA administrative remedies prior to filing their case in federal court;
- *L.D. v. Los Angeles Unified Sch. Dist.*, 117 LRP 16903 (C.D. Cal. 2017), the court found that the plaintiff was actually seeking relief for a denial of FAPE;

U.S. SUPREME COURT

- ***Endrew F. v. Douglas County Sch. Dist. RE-1***, 137 S. Ct. 988, 2017 U.S. LEXIS 2025 (2017)
 - Petitioner Student was diagnosed with autism at age two & attended the School District from pre-school – 4th Grade;
 - Student received an IEP each year that addressed Student's educational and functional needs;
 - By Student's 4th Grade, Student's parents became dissatisfied with Student's progress;
 - Student's IEP's carried over the same basic goals & objectives from 1st Grade – 4th Grade;
 - Parents were provided the same IEP for 5th Grade and withdrew Student from the School District to a private school that specialized in students with Autism

CASES APPLYING TO *ENDREW*

- *C.M. ex rel. C.M. v. Warren Indep. Sch. Dist.*, 117 LRP 17212 (E.D. Tex. 2017):
 - 9 yr. old Student with an emotional disturbance made marginal academic progress but achieved measurable progress towards behavioral goals; and
 - The Court held that the behavioral progress evidenced that the child's IEP was "appropriate in light of her age and disability-related needs."

CASES APPLYING TO *ENDREW*

- *A.G. v. Bd. of Educ. of the Arlington Central Sch. Dist.*, 69 IDELR 210 (S.D.N.Y. 2017):
 - The School District's provisions of one-on-one reading instruction to a 12 yr. old dyslexic student with ADHD in a resource classroom provided FAPE; and
 - Progress report showed that the Student was meeting the IEP goals & the School District's programs were tailored to meet the Student's needs.

Rehabilitation Act Claims

Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits exclusion, denial of benefits, and discrimination against an individual “solely by reason of his or her disability.” 29 U.S.C. § 794(a) (2012).

Rehabilitation Act Claims Section 504

Plaintiff must show he/she was “denied, on the basis of [his] disability, the benefits of a program or activity of a public entity receiving federal funds.”

Folkerts v. City of Waverly, 707 F.3d 975, 980 (8th Cir.2013) (quoting *M.P. v. Indep. Sch. Dist. No. 721*, 326 F.3d 975, 981-82 (8th Cir. 2003)).

Rehabilitation Act Claims

Section 504

Section 504 does not create general tort liability for educational malpractice.

In the Eighth Circuit, a showing of bad faith or gross misjudgment is necessary to establish a § 504 violation.

Folkerts v. City of Waverly, 707 F.3d 975, 980 (8th Cir.2013)

Brittany O. v. Bentonville Sch. Dist., 2015 U.S. Dist. LEXIS 7220,*13 (E.D. Ark. Jan. 22, 2015).

Rehabilitation Act Claims

Section 504

504 Disability Discrimination Must Prove:

- (1) Plaintiff was a qualified individual with a disability,
- (2) he was denied the benefits of a program or activity of a public entity receiving federal funds, and
- (3) he was discriminated against on the basis of his disability.

M.P. v. Indep. Sch. Dist. No. 721, 326 F.3d 975 (8th Cir. 2003) (citing *Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968, 971 (8th Cir. 1999); *but see K.R.S. v. Bedford Cmty. Sch. Dist.*, 2015 U.S. Dist. LEXIS 80895 (S.D. Iowa 2015) (holding analytical framework found in *Davis v. Monroe County Bd. of Ed.* should apply)

ADA / SECTION 504

- *J.C. v. Cambrian Sch. Dist.*, 67 IDELR 199 (9th Cir. 2016), *unpublished*; the school district's rejection of student with ADHD based on classroom capacity not disability-based discrimination. The court held that enforcing facially neutral admission criteria is not discriminatory if school is not otherwise screening students with disabilities;
- *B.C. v. Mount Vernon Sch. Dist.*, 68 IDELR 151 (2nd Cir. 2016); students qualifying for IDEA do not automatically qualify ADA / § 504.

CHILD ELIGIBILITY / EVALUATIONS

- *Doe v. Torrington Bd. of Educ.*, 67 IDELR 182 (D. Conn. 2016); student with SLD failed to prove his alleged bullying was disability-related;
- *Krawietz v. Galveston Indep. Sch. Dist.*, 69 IDELR 207 (S.D. Tex. 2017); a development of a 504 does not relieve the school district of its obligation to consider IDEA eligibility for an IEP.

IEP DEVELOPMENT & IMPLEMENTATION

- *Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ.*, 68 IDELR 33 (6th Cir. 2016); the school district failed to timely transition services assessments and failed to consider a student's preferences and needs, constituted a denial of FAPE;
- *L.M.H. v. Arizona Dept. of Educ.*, 68 IDELR 41 (D. Ariz. 2016); the court held that the school district denied FAPE to a preschool student by failing to consider peer-review research in recommending speech therapy.

FAPE

- *Parrish v. Bentonville Sch. Dist.*, 69 IDELR 219 (W.D. Ark. 2017); the school district moved a 3rd grade student with autism & violent behavior from the general classroom to an autism class pending an IEP meeting; the court held that the temporary placement did not violate the IDEA because the removal did not exceed 10 days.

VIOLATIONS & SAFEGUARDS

- *Forrester v. Indep. Sch. Dist. No. 19 of Carter County, State of Oklahoma*, 69 IDELR 247 (E.D. Okla. 2017); court ruled that the student's parents have no standing to seek discrimination claims on their own behalf;
- *Porco v. Lewis Palmer Sch. Dist. 38*, 69 IDELR 150 (D. Colo. 2017); voluntarily resolving OCR complaints does not equate to exhaustion of administrative remedies under IDEA.

DISCIPLINE ISSUES

- *Smith v. Rockwood R-VI Sch. Dist. and Knost*, 69 IDELR 268 (E.D. Mo. 2017)
 - The Parents of a Student diagnosed with Autism, Tourette Syndrome, Major Depression; OCD and ADHD
 - Parents sought money damages for Student's pain & suffering, humiliation, & loss of reputation allegedly caused by Student's 180-day suspension;
 - Student was expelled when his misbehavior was "directly & substantially related to" his disabilities;
 - Case was dismissed for failure to exhaust administrative remedies;
 - The Court held that that the Student's claims "revolved around the Student's exclusion from school & deprivation of educational benefits [Denial of FAPE.

BEHAVIOR & FBA'S / BIP'S

- *N.G. v. Tehachapi Unified Sch. Dist.*, 117 LRP 14815 (E.D. Cal. 2017) and *N.G. v. Tehachapi Unified Sch. Dist.*, 117 LRP 14815 (E.D. Cal. 2017); the school district implemented behavior interventions to address aggressive behavior of a student with autism; the court that the district had taken appropriate measures to address the student's behavioral issues

RESTRAINT & ISOLATION

- *Miller v. Monroe Sch. Dist.*, 67 IDELR 32 (W.D. Wash. 2016); school district secluding an autistic student without attempting a less severe strategy can constitute disability-based discrimination;
- *J.V. and M.W. v. Albuquerque Pub. Schs.*, 67 IDELR 55 (10th Cir. 2016); school district's handcuffing autistic student not discrimination when based on conduct rather than disability.

BULLYING AND HARASSMENT

- *Krebs v. New Kensington-Arnold Sch. Dist.*, 69 IDELR 9 (W.D. Pa. 2016); parents seeking damages alleging that the school district ignored or dismissed student's reports of persistent bullying which caused the student to commit suicide;
- *S.B. v. Bd. of Educ. of Hartford Co.*, 67 IDELR 165, 819 F.3d 69 (4th Cir. 2016); court adopted the "deliberate indifference" standard in a disability harassment claims finding the school district's response was reasonable.

FERPA

- *W.A. and M.S. v. Hendrick Hudson Cent. Sch. Dist.*, 67 IDELR 178 (S.D.N.Y. 2016); the court held that the parent could sue the school district for a breach of confidentiality when the school district sent a student with disabilities educational records that included medical information to a private school without the authorization from the parents.

REMEDY

- *Tehachapi Unified Sch. Dist. v. K.M.*, 117 LRP 14366 (E.D. Cal. 2017); court ordered school district to pay \$15,000 for a summer reading program, even though an appeal of the due process order was pending.

MONEY DAMAGES & LIABILITY

- *Conklin v. Jefferson Co. Bd. of Educ.*, 68 IDELR 122 (N.D.W.V. 2016); the court refused to dismiss the student's claims alleging discrimination under Section 504 and Title II.

ATTORNEY FEES

- *Ebonie S. v. Pueblo Sch. Dist. 60*, 67 IDELR 149 (D. Colo. 2016); the court reduced attorney fees due to repeated use of “block” and “duplicative” billing;
- *Beauchamp v. Anaheim Union High Sch. Dist.*, 67 IDELR 107, 816 F.3d 1216 (9th Cir. 2016); attorney fees reduced when relief was far less than what was offered in proposed settlement agreement.

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