

FALL 2013 NEWSLETTER

Special Education Case Law Update

by Laura O'Leary

FIFTH CIRCUIT COURT OF APPEALS

1. ***Rodriguez v. Muzyka*, No. 13-20091, 2013 U.S. App. LEXIS 20892 (5th Cir. Oct. 16, 2013).**

Allegations of negligent conduct by school personnel will not support a claim under Section 504 of the Rehabilitation Act.

The Court affirmed summary judgment for Houston ISD in a case involving the death of a deaf student with a seizure disorder. The student, A.R., received special education services within Houston ISD and attended a summer program run by the school district. A.R. claimed that the school district intentionally discriminated against her by refusing to provide services necessary to give A.R. safe and meaningful access to the summer program and that the school district grossly deviated from the standard of care in mishandling information about the A.R.'s seizure disorder.

This Court acknowledged, but did not resolve, the district court's confusion about whether the professional bad faith/gross misjudgment standard identified in *D.A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 453 (5th Cir. 2010), applies beyond the context of claims under the Individuals with Disabilities in Education Act. Instead, this Court emphasized that Section 504 does not create general tort liability for the government and that something more than negligence must be shown.

Even though Houston ISD had not communicated information about A.R.'s seizure disorder to summer program personnel and A.R. died after suffering a seizure and falling into the school pool, this Court upheld the district court's determination that, at most, A.R. only established negligence. Because such negligence does not amount to intentional discrimination, the district court did not err in granting summary judgment for Houston ISD.

THIRD CIRCUIT COURT OF APPEALS

1. ***CG v. Pennsylvania Dep't of Educ.*, No. 12-3747, 2013 U.S. App. LEXIS 22426 (3rd Cir. Nov. 15, 2013).**

In a class-action suit challenging differential educational funding for special education students in Pennsylvania, the Third Circuit addressed the varying scope of the Individuals with Disabilities in Education Act (IDEA) as compared to Section 504 and the Americans with Disabilities Act (ADA) and discussed evidence necessary to establish intentional discrimination under Section 504 and the ADA.

The Third Circuit held that compliance with the IDEA does not automatically immunize a school district from liability under Section 504 or the ADA, because IDEA provides specific, affirmative obligations for school districts, while Section 504 and the ADA provide broader prohibitions against disability discrimination. Accordingly, a plaintiff could state a claim for disability discrimination even if the school district had provided the student a Free Appropriate Public Education (FAPE) under IDEA.

The Court also addressed the differing causation requirements between Section 504 and the ADA and acknowledged that a plaintiff could state a claim based on differential treatment of students within a specific category of disability. In order to demonstrate causation under either Section 504 or the ADA, plaintiffs must prove that they were deprived of a benefit or opportunity provided to non-disabled students, or a group of students with some other category of disability, because of their disability. Because Section 504 requires intentional discrimination **solely** on the basis of disability, evidence of an alternative cause for the conduct at issue is fatal to a 504 claim.

The Court found that the plaintiffs had failed to produce evidence to show that the funding formula deprived the class members of a program, benefit, or service that was provided to students outside their class and affirmed judgment for the Department of Education.

TEXAS DISTRICT COURTS

1. *Pagan-Negron v. Sequin Indep. Sch. Dist.*, No. SA-12-CV-055-XR, 2013 U.S. Dist. LEXIS 136764 (W.D. Tex. Sept. 24, 2013).

The IDEA is narrower in scope than Section 504 and the ADA, and the IDEA should not be construed so broadly that any injury a disabled student suffers in school is automatically subject to the IDEA. Additionally, under Section 504 and the ADA, a school district cannot intentionally discriminate against a disabled student on the basis of his disability before the school district is aware of that disability.

An elementary school student who was provided with special education services due to his speech impediment, exhibited significant behavior problems over the course of several years. He was eventually diagnosed with autism and provided additional services. After the student had a violent episode at home involving suicidal ideation, he was briefly hospitalized and subsequently requested, and received, homebound services from the school district due to his emotionally fragile state.

The plaintiffs brought IDEA claims through a Due Process Hearing, and the parties settled these claims. The plaintiffs subsequently filed a lawsuit under Section 504 and the ADA claiming that one of the student's principals had improperly disciplined him and had therefore created a hostile education environment for the student. The court held that plaintiffs' claim that the school district violated Section 504 and the ADA by "failing to provide [the student] with a safe, non-hostile educational environment" was not

subsumed within the settlement of the parties' IDEA settlement. Because the plaintiffs did not challenge the student's placement or related educational services, but rather, sought only tort-like damages for physical pain, mental anguish, medical expenses, and mental health expenses, damages not available under IDEA, administrative exhaustion of these claims was not required.

However, relying on *D.A. v. Houston ISD*, 629 F.3d 450, 454 (5th Cir. 2010), the court granted the school district's motion for summary judgment on plaintiffs' Section 504 and ADA claims because a student cannot be discriminated against due to his disability until the disability has been demonstrated to exist. The student in this case had not been diagnosed with autism at the time that the disciplinary misconduct was alleged to have taken place, and therefore the principal's conduct could not have amounted to discrimination on the basis of disability.

2. *Davis v. Biggers*, No. H-12-1173, 2013 U.S. Dist LEXIS 150865 (S.D. Tex. Sept. 12, 2013).

A physically disabled student at the University of Houston—Clear Lake (UHCL), sought money damages under Section 504 and the ADA, arguing that although UHCL operated a shuttle system free of charge for students, it violated disability discrimination laws because the university did not provide wheelchair-accessible vehicles.

The court granted UHCL's motion to dismiss, explaining that a plaintiff may only recover money damages under Section 504 and the ADA upon proof of intentional discrimination. Citing *Carter v. Orleans Parish Pub. Sch.*, 725, F.2d 261, 264 (5th Cir. 1984), the court explained that allegations which leave open the possibility of negligence or inadvertence as sources of error are insufficient to state a claim of intentional discrimination. The court noted that UHCL had offered to arrange free bus and taxi transportation for the student and that UHCL's offer contradicts a presumption of intentional discrimination. Plaintiff's allegations that UHCL failed to act in response to his requests or to obvious need did not rise to the level of intentional discrimination.