

2013 YEAR IN REVIEW

SIGNIFICANT DECISIONS IN 2013: **SPECIAL EDUCATION CASE LAW UPDATE**

By Laura O'Leary

United States Court of Appeals for the Fifth Circuit

***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.

***Mann v. La. High Sch. Athletic Ass'n*, No 12-30961, 2013 U.S. App. LEXIS 14084 (5th Cir. July 11, 2013).**

A student who qualifies as disabled under the Individuals with Disabilities in Education Act does not necessarily qualify as disabled under the Americans with

Disabilities Act. The ADA includes a more stringent requirement: that the plaintiff prove that his impairment substantially limits a major life activity.

A student diagnosed with an anxiety disorder sought a preliminary injunction based on his likelihood of success with respect to a claim under the Americans with Disabilities Act. In order to establish that he is disabled under the ADA, the student needed to show that he had a physical or mental impairment that substantially limits one or more major life activities. The student had not argued that his anxiety disorder qualified as a disability under the ADA, relying instead on the definition of disability in the Individuals with Disabilities Education Act. The Court explained that the scope of the ADA and IDEA and their respective definitions of disability differ, and it stated that the ADA definition of disability is more stringent due to its requirement that a plaintiff prove that his impairment substantially limits a major life activity, an inquiry not required by the IDEA definition.

The Court did not accept the student's doctor's conclusory assertion that the student's anxiety disorder met the criteria for a disability under the ADA because it substantially limits his life activities of learning, concentrating, thinking, and working. Instead, the Court required further analysis or articulation of the particular way that the student is substantially limited in any of those major life activities due to his anxiety disorder.

***Stewart v. Waco Indep. Sch. Dist.*, 711 F.3d 513 (5th Cir. 2013), vacated and withdrawn, No. 11-51067, 2013 U.S. App. LEXIS 11102 (June 3, 2013).**

There is considerable confusion in the Fifth Circuit regarding the proper standards to apply to disability discrimination claims brought by students under Section 504 of the Rehabilitation Act.

Stewart, a disabled high school student, sought recovery from the school district under Section 504 of the Rehabilitation Act, claiming that she had been repeatedly sexually abused by another student at school. Stewart argued that her disability-related student-on-student sexual harassment claim should be analyzed like a Title IX claim, given the similarity in language between Title IX and Section 504, and that the school district should be held liable for demonstrating deliberate indifference to the sexual assaults she experienced at school. Additionally, Stewart claimed that the school district grossly mismanaged her IEP and failed to provide her with necessary accommodations to keep her safe from sexual assault at school. The district court granted the school district's motion to dismiss Stewart's claims.

On appeal, the Fifth Circuit panel indicated that a Title IX type analysis appears consonant with the bad-faith and gross-misjudgment standard found under Section 504, and also comports with the high standard applied in the context of a state actor's liability for constitutional claims based on third-party harms, but they stated that they need not decide the viability of such a cause of action, because Stewart had failed to allege facts

sufficient to state a claim for deliberate indifference by the school district. The court affirmed the dismissal of Stewart's claim under this theory of liability.

However, with respect to whether the school district refused to provide Stewart with reasonable accommodations, two of the three judges concluded that "a school district refuses reasonable accommodations under § 504 when it fails to exercise professional judgment in response to changing circumstances or new information, even if the district has already provided an accommodation based on an initial exercise of such judgment." The majority then explained that the gross misjudgment standard, which they equated with gross negligence, applies to a school district's refusal to make reasonable accommodations. Judge Higginbotham strongly dissented from this portion of the panel's decision, stating that it defies precedent and that deliberate indifference, bad faith, and gross misjudgment rest upon substantially identical levels of culpability.

The court also addressed questions about administrative exhaustion for Section 504 claims. The majority declined to decide whether administrative exhaustion under IDEA was jurisdictional because they held that Stewart's claims under Section 504 sought relief that was not available under IDEA, and therefore her claims were not subject to administrative exhaustion. The majority counseled that courts should look to the plaintiff's prayer for relief in determining whether exhaustion applies. Because Stewart sought money damages for past and future pain and suffering, as well as medical expenses, relief not available under IDEA, Stewart's claims under Section 504 were not subject to the exhaustion requirement. Judge Higginbotham strongly dissented from this portion of the panel's decision, as well, arguing that at the heart of Stewart's claims is a dispute over the content and implementation of her IEPs and stating that Stewart's failure to exhaust her administrative remedies under IDEA should bar her from seeking money damages under Section 504.

The school district filed a petition for rehearing and for rehearing en banc, asking the Fifth Circuit to rehear the decision on the gross misjudgment claim. On June 3, 2013, the panel withdrew and vacated its decision and remanded the case to the district court, noting, "Stewart's § 504 claim presents difficult questions that, in our view, should not be reached unless necessary. The district court did not address whether Stewart's claim was barred by any alleged failure to exhaust or as untimely, defenses that may be dispositive of the entire matter."