School Law for Administrators

Negligent Supervision

Mother files lawsuit against school district claiming negligent supervision of daughter on camping trip

Citation: *J.M. v. Pleasant Ridge Union School District, 2016 WL 5930636 (E.D. Cal. 2016)*

A federal district court in California recently granted in part and denied in part a school district's request to dismiss claims filed by a mother after her child was injured while on a school trip. The mother alleged discrimination under Section 504 of the Rehabilitation Act, negligent supervision, violation of the student's right to attend a safe school under state law, and intentional infliction of emotional distress. The district asked the court to dismiss all but the Section 504 claim and the court agreed in part, but denied the request to dismiss the negligent supervision claim.

J.M. was a student at Magnolia Intermediate School in the Pleasant Ridge School District. She was disabled and school staff knew about her disabilities when she was required to go on a camp trip at Alliance Redwoods Conference Grounds. J.M.'s mother, Nancy Morin-Teal, worked with the school district to create a written care plan for J.M. for the trip. Morin-Teal also demonstrated to one of the teachers how to operate a breathing machine J.M. had to use. In addition, J.M.'s doctor had given written orders that J.M. had to stay out of direct sunlight.

The school staff allegedly forced J.M. to stay in the sun for nine and a half hours, ignoring her protests. They gave her Tylenol and had her lie down, but did not get a nurse. As a result, J.M. allegedly suffered second degree burns, heat exhaustion, heat stroke, permanent damage to her internal organs, emotional distress, and post-traumatic stress syndrome. Morin-Teal also complained that the school did not follow J.M.'s accommodation plan, which allowed her to leave class when she needed to rest her eyes and also allowed her to eat lunch in the office to avoid sitting in the sun. Morin-Teal complained the teacher did not let J.M. leave for breaks, and the office staff usually told J.M. to leave at lunch.

Morin-Teal, on behalf of J.M. and herself, brought a lawsuit against the Pleasant Ridge School District, Alliance Redwoods Conference Grounds, the County of Nevada, and various individuals claiming violations of the Rehabilitation Act and related state law claims. She claimed: 1) discrimination under Section 504 of the Rehabilitation Act; 2) negligent supervision of J.M.; 3) a violation of J.M.'s right to attend a safe school under state law; 4) and intentional infliction of emotional distress. The school district asked the court to dismiss claims two through four.

The court granted the school district's request to dismiss the third and fourth claims, and denied the request to dismiss the second claim for negligent supervision.

J.M. claimed the school district failed to properly supervise J.M. while she was under their care, citing California law. Because the school district is a public entity, J.M. had to establish that the school district violated a statute. According to Section 815.2 of California state code, "[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee . . ." The court found that J.M. had established a statutory basis for the negligent supervision claim.

The law also requires school officials to supervise the conduct of children at all times and "to enforce those rules and regulations necessary to their protection" *(Hoff v. Vacaville Unified Sch. Dist.)*. J.M. claimed that Magnolia Intermediate School had a duty to take reasonable care in supervising J.M. and to prevent injury to her. When they forced J.M. to stay in direct sunlight and refused to let her call her mother, they violated that duty. Other students were allowed to call their parents, but J.M. was forced to lie down, take Tylenol, and did not have adequate medical care as promised to Morin-Teal. J.M. further alleged that the staff encouraged J.M.'s peers to confront her, even though that was dangerous for her because of her disabilities.

J.M. alleged damages resulted from the negligence, including "severe second degree burns on her skin, heat exhaustion, heat stroke, permanent damage to her internal organs including kidney and liver failure, emotional distress, and post-traumatic stress syndrome." In addition, J.M. claimed she was in distress and crying hysterically as a result.

The court found that J.M. provided enough alleged facts to demonstrate that the school district owed a duty of care to her and breached that duty. Therefore, the court denied the school district's request to dismiss this claim.

Morin-Teal and J.M. claimed that the school district "failed to provide a safe, secure, and peaceful location for school activities," violating the state constitution. However, the court noted that other cases have held there is no obligation on the state mandated by this provision. Therefore, the court dismissed this claim.

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Around the Nation ~ South Carolina

A policy barring parent volunteers from being coaches has been reversed

A policy enacted in 2014 that disallowed parent volunteers from coaching athletic teams has been overturned by the school board, after new members were instated. Those who opposed the policy claimed that banning volunteers from coaching their own children was retaliation against Hanahan city officials for denying the district's request to rezone a tract for a new elementary school. "Truthfully, the only place that policy was put in place was Hanahan," Board Chairwoman Sally Wofford said.

The school board unanimously passed the revised policy, and the policy is expected to get final approval on January 24, 2017. "This is something that's close to my heart," Wofford said. "We have excellent principals in this school district, and I trust them to name the volunteers that are best for their program."

In 2014 the school board approved a policy banning parent volunteers from coaching. Superintendent Rodney Thompson explained the rationale behind the decision by saying that there were concerns that some parent-coaches favored their own children. The policy made some allowances, including a clause that allowed principals to request an exception "if the parent coach is determined to be vital to the existence of the program." Wofford said, "Some principals just said, 'There's no policy so I'll decide who coaches at my school.'" She indicated, "Other principals were under too much scrutiny to be able to do that."

The policy cost six Hanahan High School volunteers their coaching jobs according to Principal Ric Raycroft. The school district was able to find replacements for most of these positions, but an exception was given to the girls' soccer coach, Dave Johnson, a former Hanahan player who helped start the program. "We would have found a way to make it happen even if it had not been approved," Raycroft said. "I serve at the pleasure of the superintendent, and I enforce the policies set forth by our school board. I don't question them."

Many parents believe that this policy doesn't have the best interest of students in mind. Johnny Cribb, who helped coach the school's baseball teams, and City Councilman Mike Dyson, a softball coach, were both fired after the policy passed. "We lost some really good coaches-mentors-quality individuals to that policy, and I don't know how that helps kids," Cribb said.

Changing the policy will give the school district more flexibility in terms of their hiring, and it also,"allows the principal, the athletic director, and the coaches to do what's best for their student-athletes." Cribb said he wouldn't return as a coach. He told his son and daughter, who both play a few sports, "I'll be a dad and a fan and help them on the side until they graduate."

The timing of the policy has been called into question as it was approved just months after Hanahan City Council denied the district's rezoning request for a 12.1-acre site known as the Bowen tract. The district filed a lawsuit appealing the decision, which was dismissed in May 2014, after the landowner pulled out of the deal.

Only two of the nine board members who considered the issue in 2014, Shannon Lee and Frank Wright, still sit on the board. Lee was not at Tuesday's meeting. November's elections brought five new board members, with two incumbents—including board chair Jim Hayes—losing their seats and three others not seeking reelection on the nonpartisan board.

Source: *The Berkeley Independent*

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In the fourth claim, Morin-Teal and J.M. claim the district intentionally inflicted emotional distress on them. The court noted the elements of intentional infliction of emotional distress are: "1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; 2) the plaintiff's suffering severe or extreme emotional distress; and 3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct" *(Christensen v. Superior Court).*

While the court found that the actions of the school district that resulted in J.M.'s emotional and physical distress could have reasonably been interpreted as being intentionally inflicted against her, the claim failed where Morin-Teal argued that she also suffered by witnessing her daughter being denied adequate medical care for her injuries. Morin-Teal heard about J.M.'s medical needs from another student's mother who contacted her. Morin-Teal never actually witnessed the outrageous conduct. The court noted, "[i]t is not enough that Morin-Teal witnessed *the effects* of the allegedly outrageous conduct. California law requires the outrageous *conduct* occurred in Morin-Teal's presence while Pleasant Ridge was aware of her presence."

Therefore, the court dismissed J.M.'s fourth claim against the school district and other defendants.

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Disability Discrimination

Mother argues disability discrimination in admissions decision

Citation: *J.C. ex rel. W.P. v. Cambrian School Dist., 2016 WL 1553844 (9th Cir. 2016)*

The Ninth U.S. Circuit Court of Appeals has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The Ninth U.S. Circuit Court of Appeals has affirmed a lower court's decision in favor of a school district, finding no support for the argument by the parents of a disabled child that their son was wrongfully denied admission to a charter school in the district based on his disability.

J.C. was a disabled student who lived in the Cambrian School District. In the district was a charter school called Fammarte Charter Elementary School. J.C. was a student at the charter school in first grade and his mother wanted him to attend for second grade. However, during his first grade year, he moved out of the district. Under the admissions policy for Fammarte, "transfer students" who lived outside the district had a lower priority than in-district students. Because of this and the number of expected second graders, J.C. was not guaranteed a spot and was on the waiting list.

During his time in first grade, J.C.'s mother believed that staff at Fammarte became inappropriately frustrated with J.C. because of his disability. For example, she found J.C. had been excluded from a trip to the library along with another disabled student. She also claimed that a teacher made J.C. and another disabled student turn their desks away from the rest of the classroom. There was a contentious relationship between the parties because of these and other things.

Fammarte ultimately denied J.C. admission for his second grade year. The school has said that the decision was based on its admission policy and that the second grade had been fully enrolled and only one from the wait list was admitted. Part of the school's explanation for the limit on the number of students it admitted was in part due to budgetary constraints.

J.C.'s mother believed this decision was discriminatory and based not on budgetary reasons and the admissions policy but based on J.C.'s disability. She sued the district alleging that her son had been denied admission based on his disability in violation of the ADA and the Rehabilitation Act. Among other things, she argued that the school had decreased the number of second graders admitted from previous years (J.C. was the first on the waiting list) and that there was space in a third grade class and the school could have moved one of the students in the shared second/third grade class to the third grade to make space.

Despite these things, the lower court granted the district's request for summary judgment, finding that the school followed its admissions policy and that there was no support for the argument that disability discrimination led to the district's decision to deny J.C. and other students on the wait list admission. J.C.'s mother appealed.

The appeals court however affirmed, finding that the lower court correctly granted summary judgment on J.C.'s ADA and Rehabilitation Act claims because J.C. failed to raise an issue of material fact on causation. Under the ADA, J.C. is required to show that he was denied admission "by reason of his disability." The Rehabilitation Act similarly required that the family show that J.C. was denied admission "solely by reason of . . . his disability." However, the court concluded that J.C. did not meet this burden to show that the admission decision was motivated by disability discrimination. Rather, the court noted, the evidence showed that J.C. was denied admission pursuant to a valid admissions policy.

The appeals court addressed the family's argument about whether the school was required to give preference to existing students under California's Education Code, noting that regardless of this regulation, the school's enrollment policy explicitly gave preference to existing students. That the school's definition of "existing students" excluded students who moved out of the district while attending the school was "reasonable and not based on discrimination," the court concluded.

As to the district's argument that the second grade class was at capacity due to budget reasons and was not related to J.C.'s disability, the court found this reasonable and not discriminatory despite the strained relationship and "isolated negative interactions" in the past.

Therefore, because the family did not raise the causation element of the ADA and Rehabilitation Act claims, the appeals court concluded summary judgment was properly granted.

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Around the Nation ~ Florida

DOJ supports suit on behalf of immigrant students

Collier County Public School District (CCPS) filed a motion in Federal court asking to dismiss a suit brought against them by the Southern Poverty Law Center on behalf of a number of immigrant students who were not admitted to local high schools because of their ages and limited English skills. The U.S. Department of Justice (DOJ) then stepped up support of the lawsuit, and they filed a "Statement of Interest" asking a federal district court to deny the CCPS motion to dismiss this suit.

The brief, filed by the DOJ, asserts that the court must take the families' allegations as true at this point in the process because it has already been shown by the plaintiffs that the school board violated parts of the Equal Education Opportunities Act and the Civil Rights Act. According to the lawsuit, six students who emigrated from a variety of countries, like Haiti and Guatemala, were all denied admission to schools. As an alternative, a few of these students were directed by the district to adult English learning classes.

Michelle Lapointe, SPLC attorney claims that, "The DOJ has taken an interest in these cases because the policies of schools like Collier County that deny enrollment to English language learner students and immigrant students violate federal law." Additionally, the lawsuit states that over the course of the 2015-2016 school year, at least 369 foreign-born minors in Collier County were enrolled in adult English classes rather than regular public high schools where they should have been.

School district officials contend the notion that these students should have been enrolled in public school. A spokesman from the school district stated that the district believes that referring students to English language and adult education programs is perfectly legal. Even so, CCPS says that "when persons such as the Plaintiffs have been out of school or are years behind linguistically and educationally, placing them in high school would only cause them to fall further behind and set them up for failure."

In their defense, CCPS is insistent that most of the students in questions are more likely to succeed in adult English classes than in a regular education program at a public high school. Additionally, the school district cites a countywide policy that says that many of these students are too old to attend high school anyway.

Source: *WGCU*

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Around the Nation ~ Louisiana

DOJ: Louisiana Tech's elementary lab school may finally be making progress in their effort to desegregate

The U.S. Department of Justice (DOJ) has reached a settlement in a desegregation suit that began in 1984 when A.E. Phillips Laboratory School (PLS) was first ordered to desegregate. The original lawsuit was against the Louisiana Tech University (LTU), which operates PLS. In spite of the lawsuit, PLS wasn't making much progress in their efforts to desegregate until the federal court reactivated the case in 2008. At this time, nearly 85% of the school's students were white, less than 12% black, statistics that don't come close to matching the local demographics of the area.

The reactivation of the case seems to be working, and the number and percentage of black students enrolled in the school have increased each year since the 2008-2009 school year, according to the settlement. Although a settlement has been reached, the Department of Justice is adamant that more needs to be done to increase the percentage of black students enrolled in the school, and LTU agrees. The settlement calls for expanding school facilities to two classrooms per grade level to accommodate more black students.

Originally, PLS was founded as a "practice school" for Louisiana Tech's teacher training program, when the University was known as the Louisiana Industrial Institute. The school, which has been on the college campus since 1969, is government funded but also charges an annual tuition of $2,200, which can be an excluding factor to low income families.

For this reason, the settlement also calls for the availability of tuition scholarships to black students and a concerted effort on the part of the University to recruit black candidates for staff and teaching jobs at the school. Assistant Attorney General Vanita Gupta, head of the DOJ's Civil Rights Division, said in a statement that the settlement "establishes long overdue protections critical to increasing the enrollment of-and support for-black students at A.E. Phillips." "We commend the Louisiana Tech community for its firm commitment to make the promise of equal access to education a reality for all children, regardless of the color of their skin," Gupta said.

Source: *ABC News*

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