

Presented:
27th Annual School Law Conference

March 1, 2012
Austin, TX

IDEA, Section 504, the ADA and Section 1983: How Do They All Fit Together?

JIM WALSH

jwalsh@wabsa.com

WALSH, ANDERSON,
GALLEGOS, GREEN
and TREVIÑO, P.C.

ATTORNEYS AT LAW

www.WalshAnderson.com

Austin Office
505 E. Huntland Dr., Ste 600
Austin, TX 78752
512/ 454.6864 (p)
512/467.9318 (f)

Some Recent Cases.....

W.A. v. Patterson Joint Unified School District, 57 IDELR 38 (E.D.Cal. 2011)

The court granted qualified immunity to two school officials charged with improper use of physical restraint in violation of the 4th Amendment. Based on the administrative record, the court concluded that each instance of restraint was reasonable, as it was based on a serious threat of harm to the student or others; the techniques used were approved by the district and proper.

Hatfield v. School District of Sarasota County, Florida, 56 IDELR 7 (M.D.Fla. 2011)

The court refused to dismiss a case brought against a teacher charged with substantive due process violations due to the use of force against a student. The teacher sought dismissal, arguing that the injuries allegedly incurred were merely “cuts and scrapes.” The court rejected this, noting that the student was severely disabled, non-ambulatory, non-verbal and permanently incapable of intellectual development beyond the stage of an infant. The court denied a qualified immunity defense as well.

Comment: The teacher was also charged with aggravated child abuse.

Shinn v. Detroit Public Schools, 56 IDELR 41 (E.D. Mich. 2011)

The court dismissed the claim against the principal, but allowed the claim against the paraprofessional to go forward. The student, a severely disabled 9-year old, died a few days after having a seizure at school. There was enough evidence in the record to allow the case against the paraprofessional to go forward. The evidence indicated that the paraprofessional pushed the child to the ground while saying “I don’t like you anyway.” There was no evidence by which a reasonable juror could conclude that the principal had sufficient advance knowledge of the abuse of the child, or of other children by the paraprofessional, to warrant a finding of his liability.

Minnis v. Sumner County Board of Education, 56 IDELR 155 (M.D.Tenn. 2011)

The court dismissed claims against a teacher and school board based on allegations of unconstitutional abuse of the student. The court held that the evidence fell short of the type of injury that would be constitutionally recognizable. The court noted that case law has not yet recognized, or ruled out, the possibility of liability based on psychological harm alone without physical harm but that “at the very least, the degree of psychological harm would have to be ‘severe’ to satisfy the injury requirement. A similar case involving the same teacher but a different student was also dismissed on the same basis. See Long v. Sumner County Board of Education, 56 IDELR 160 (M.D.Tenn. 2011).

Camac v. Long Beach City School District, 57 IDELR 35 (E.D.N.Y. 2011)

The only allegation in the pleadings about the superintendent was that he was the superintendent during the time that the student was discriminated against. Due to the absence of any allegation

of personal wrongdoing by the superintendent, the claims against him were dismissed. Other school officials were accused of deliberately giving false information to police and false testimony at a hearing, and thus were not entitled to qualified immunity.

Broaders v. Polk County School Board, 57 IDELR 46 (M.D.Fla. 2011)

The court rejected a claim based on a school's alleged failure to protect a student from harm caused by a third party. The general rule is that governmental entities are not constitutionally required to protect individuals from harm. The "special relationship" exception to this general rule is not triggered by compulsory attendance laws.

T.W. v. School Board of Seminole County, Florida, 54 IDELR 243; 610 F.3d 588 (11th Cir. 2010)

The Circuit Court, in a 2-1 decision, affirmed a summary judgment in favor of a teacher and the school district after concluding that the student had not suffered a constitutional injury. The student alleged physical and verbal abuse by the teacher, much of which was confirmed by teacher aides who worked in the classroom. However, the court concluded that the instances of physical restraint, along with the profanity and verbal abuse, did not "shock the conscience" of the court, and therefore, did not violate the constitution. With regard to Section 504, the court noted that it was not clear whether plaintiffs are required to prove intentional discrimination or deliberate indifference, but under either standard, this case failed. Key Quote:

The record established that school administrators or the Professional Standards Division of the School Board investigated all complaints of abuse that parents lodged against Garrett and that they were unable to substantiate the complaints. Because it investigated the complaints, and was unable to substantiate them, the School Board did not know that it was substantially likely that a violation of federally protected rights would occur.

Comment: The facts alleged in this case are very disturbing. The district court decision includes footnotes indicating that the teacher was charged with criminal child abuse in state court, and that there are 14 companion cases arising out of the same fact situation. This decision only addresses possible liability under the U.S. Constitution and Section 504. Other avenues of redress exist.

Sagan v. Sumner County Board of Education, 54 IDELR 280 (M.D.Tenn. 2010); and 55 IDELR 276 (M.D.Tenn. 2011)

Parents of a child with Down Syndrome sued the school district and a special education teacher based on allegations of physical and verbal abuse. The court 1) dismissed all claims against the teacher individually that were based on the ADA or Section 504 because there is no basis for individual liability under those statutes; 2) dismissed the claim against the teacher in her "official" capacity because it was redundant of the claim against the district; 3) dismissed a claim of a constitutional violation of the parents' rights of family association with their child because there was no loss of custody or separation from the child; 4) dismissed claims against the district

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: IDEA, Section 504, the ADA and Section 1983: How Do They All Fit Together?

Also available as part of the eCourse

[How the IDEA, Section 504, the ADA and Section 1983 All Fit Together; plus Service Animals in the Public Schools](#)

First appeared as part of the conference materials for the
27th Annual School Law Conference session

"IDEA, Section 504, the ADA and Section 1983: How Do They All Fit Together?"