

Recent Developments in Section 504 Student Litigation

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Recent lawsuits involving student claims alleging violations of Section 504 of the Rehabilitation Act have presented issues concerning: (1) the liability standard applicable to claims based on student conduct; (2) the liability standard applicable to claims based on conduct by school personnel; and (3) the necessity of administrative exhaustion, in light of *Fry v. Napoleon Community Schools*.

Liability Standard

Section 504 is one of three interrelated federal anti-discrimination statutes which were passed pursuant to congressional authority under the Spending Clause. These three statutes are Title VI,[1] which prohibits discrimination based on race, color, or national origin; Section 504,[2] which prohibits discrimination based on disability; and Title IX,[3] which prohibits discrimination based on sex. Both Title IX and Section 504 are to be interpreted in conformity with Title VI.[4]

With respect to Title IX, the Supreme Court has expressly rejected vicarious liability and has established that a school district cannot be liable for monetary damages for a claim unless the school district is deliberately indifferent to sex-based discrimination of which it had actual knowledge. This deliberate indifference standard applies to Title IX cases based on allegedly discriminatory conduct by school district personnel or by other students.[5] Title IX cases in the Fifth Circuit follow this standard.[6]

Because Title IX and Section 504 are interlocking statutes which should be subject to the same analysis, the deliberate indifference standard ought to apply to student claims under Section 504, regardless of whether such claims are based on alleged conduct by school district personnel

[1] 42 U.S. CODE §2000d.
[2] 29 U.S. CODE § 794.
[3] 20 U.S. CODE §1681 et seq.
[4] *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181 (2002).
[5] *E.g., Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Davis . v. Monroe County Bd. of Educ*., 526 U.S. 629 (1999).
[6] *E.g., Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156 (5th Cir. 2011).

or other students. Unfortunately, however, a Fifth Circuit case from 2002, *Delano-Pyle v. Victoria County, Texas*,[7] caused confusion which persists to the present day with respect to the appropriate liability standard for claims under Section 504.

In *Delano-Pyle*, the Fifth Circuit rejected an argument that liability standards applicable to claims under Section 1983 should also apply to claims under Section 504, and stated, "[t]here is no 'deliberate indifference' standard applicable to public entities for purposes of [Section 504]." Instead, the Court held that a plaintiff must show "intentional discrimination" in order to recover compensatory damages for a disability-based discrimination claim. Based on its interpretation of a section of the Americans with Disabilities Act which relates to employment claims, not claims of discrimination by public entities, the Court then imposed vicarious liability on the County, finding evidence of intentional discrimination due to the conduct of a County employee.

In the years since it issued *Delano-Pyle*, the Fifth Circuit has often repeated its holding that a plaintiff may not recover compensatory damages under Section 504 without showing "intentional discrimination," but the Court has not clarified what constitutes "intentional discrimination" in this context. This has led to the development of different liability standards for Section 504 claims based on allegations about conduct by school personnel compared with claims based on allegations about conduct by other students. Additionally, this has led to ad hoc decisions in which district courts and judges of the Fifth Circuit will review the facts alleged or the evidenced adduced and simply declare either that the plaintiff has or has not demonstrated intentional discrimination.

Liability Standard Applicable to Claims Based on Student Conduct

[7] 302 F.3d 567 (5th Cir. 2002).

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