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Discrimination and Student Discipline

Exhibits

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I. The Law

A. U.S. Constitution

1. Equal Protection Clause. U.S. Const. amendment XIV § 1.

- a) A state may not “deny to any person within its jurisdiction the equal protection of the law.”

To establish a *prima facie* case of discrimination under the equal protection clause, a plaintiff must assert that she/he is: 1) a member of a protected class; 2) otherwise similarly situated to members of an unprotected class; 3) treated differently from members of an unprotected class; and 4) that the defendants acted with discriminatory intent. *Jackson v. Katy ISD*, 951 F.Supp. 1293 (1996).

2. Due Process clause. U.S. Const. amendment XIV § 1.

- a) A state may not “deprive any person of life, liberty, or property without due process of law.”
- b) Claims for procedural due process violations and substantive due process violations are available.

B. Statutes

1. Title VI – Civil Rights Act of 1964; Section 601, Title VI; 42 U.S.C. § 2000c and 2000d and implementing regulations at 34 C.F.R. Part 100.

- a) No person in the U.S. shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or in any public elementary or secondary school.
- b) Private individuals can sue to enforce § 601 of Title VI. *Alexander v. Sandoval*; 532 U.S. 275 (2001). Section 601 prohibits intentional discrimination, so plaintiff must provide discriminatory intent. *Canutillo ISD v. Leija*, 101 F.3d 393 (5th Cir. 1996). The entity or an official authorized to institute corrective actions must have actual knowledge of the discrimination and respond with deliberate

indifference. *Gebser v. Lago Vista Indep. Sch. Dist*, 524 U.S. 274 (1998).

2. Section 1983, 42 U.S.C. § 1983

- a) “Every person who, under color of any statute, ordinance, regulation, custom, or usage, ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”. 42 U.S.C. § 1983. *See, also* 28 C.F.R. § 35.130. Retaliation and coercion are also prohibited. 28 C.F.R. § 35.134.
- b) Section 1983 is not a source of substantive rights. It provides a method to seek legal action for violations of already-conferred federal rights. *Bauer v. Texas* 341 F.3d 352 (5th Cir. 2003); *Albright v. Oliver*, 510 U.S. 266 (1994); *Wilson v. Garcia*, 471 U.S. 261 (1985). Further, *respondeat superior* liability is unavailable. *Rivera v. Houston ISD*, 349 F.3d 244 (5th Cir. 2003).
- c) To state a racial discrimination claim under the Equal Protection clause and Section 1983, “the plaintiff must allege and prove that [(1) he or she] received treatment different from that received by similarly situated individuals, and that [(2)] the unequal treatment stemmed from discriminatory intent.” *Priester v. Lowndes Cty*, 354 F.3d 414 (5th Cir 2004); *Taylor v. Johnson*, 257 F.3d 470 (5th Cir. 2001); *Fennel v. Marion ISD*, 804 F.3d 398 (5th Cir. 2015). The equal protection clause requires invidious and purposeful discrimination. *U.S. v. Morrison*, 529 U.S. 598 (2000).
- d) To state a § 1983 claim against an institution, Plaintiffs must allege and prove: 1) a constitutional violation was caused as the direct result of an official custom or policy; 2) the final policy-maker approved the custom or policy; 3) the final policy-maker acted with deliberate indifference; and 4) the custom or policy was the “moving force” behind the constitutional violation. *Bd of Cty Comm’rs v. Brown*, 520 U.S. 397 (1997); *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978). In Texas, the final policy-maker is the school board. *Rivera v. Houston ISD*, 349 F.3d 244 (5th Cir. 2003).

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