

Dismissal of Student's Section 504 Claims Against the Department of Education Upheld

September 09, 2019

The Ninth Circuit recently affirmed the dismissal of a case against a school district and the California Department of Education (CDE) that alleged the entities violated Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) in failing to offer a student placement in an in-state residential treatment center (RTC). (*Paul G. v. Monterey Peninsula Unified Sch. Dist.*, 2019 S.O.S. 18-16536.) The individualized education program (IEP) team of an adult student with autism offered the student placement at an RTC due to the student's violent behaviors. However, the district was unable to find an RTC in California that would accept a student over the age of 18 and instead placed the student at a facility in Kansas. The student attended the Kansas RTC for a short time, but then returned home because he was homesick.

The parents filed a request for due process with the Office of Administrative Hearings (OAH) against both the District and the CDE, claiming that the student was denied a free appropriate public education (FAPE) when he was placed in an out-of-state RTC because no in-state facility existed. The OAH dismissed the claims against the CDE because they were not responsible for providing the student with a FAPE, and the parents and the District entered into a settlement agreement to resolve their claims.

After entering into the settlement agreement, the parents filed a lawsuit against the District and CDE in district court, claiming the adult student suffered discrimination because no in-state RTCs existed for students over the age of 18 and was owed monetary damages as a result. The district court dismissed the case, finding that the parents failed to exhaust their administrative remedies. While the parents had filed a due process complaint with the OAH, no final determination had been made regarding whether the student required placement at an in-state RTC to receive a FAPE because CDE was dismissed as a party and a settlement agreement had been reached with the District.

The parents appealed this determination to the Ninth Circuit, who agreed with the lower court. The Ninth Circuit noted that Section 504 and the ADA require the exhaustion of administrative remedies prior to bringing a discrimination claim. The Ninth Circuit had concerns about the parents bypassing the OAH process, particularly where the basis of the claim appeared to be the adequacy of the student's out-of-state placement rather than equality of access to a public facility, which in this case was alleged to be an in-state RTC. The parents' previous filing of a



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due process complaint on largely the same issue further pointed to the need to exhaust administrative remedies and the failure to demonstrate that an exception to this requirement applied.

This decision highlights the importance of the established processes for resolving disputes between parents and school districts, including mediation, an impartial hearing, and appeal, and protects districts from costly lawsuits alleging discrimination under Section 504 and the ADA which could be resolved through the due process procedures. Additionally, while this case did not determine whether the CDE is required to create RTCs for students over the age of 18, additional litigation to address this concern may arise in the future.

If you have any questions regarding the interplay of the rights for students with disabilities under the IDEA, Section 504, and the ADA, please do not hesitate to contact a DWK attorney in our Students and Special Education practice group.

PRACTICE AREAS

- Students and Special Education