Damages May be Awarded if School District Violates Section 504 with Deliberate Indifference

The Federal Ninth Circuit Court of Appeals recently reaffirmed that a student may establish a claim for damages under Section 504 of the Rehabilitation Act of 1973 if a school district violates Section 504 “intentionally or with deliberate indifference.” (Mark H. v. Hamamoto (9th Cir. 2010) ___ F.3d ____, 2010 WL 3349198.) This case serves as a reminder that, in addition to filing a due process complaint under the Individuals with Disabilities Education Act, a student may be able to sue for damages under Section 504 if a school district fails to provide special education services and/or develop an appropriate IEP.

In Mark H., the family of two students with autism prevailed in an administrative hearing against the Hawaii Department of Education (DOE). The hearing officer found that the DOE denied the students a Free Appropriate Public Education under the IDEA and that their IEPs were inadequate. Following the administrative hearing, the family sued the DOE in federal district court, seeking damages for alleged violations of Section 504. The district court held that there was no private right of action to enforce FAPE as required by Section 504. The court also held that the family failed to establish a Section 504 violation because the family did not demonstrate that the school district intentionally discriminated against the students solely by reason of their disabilities. The family appealed the decision to the Ninth Circuit Court of Appeals.

The Ninth Circuit held that there is a private right of action under Section 504. However, establishing a violation of the right to a FAPE under the IDEA is not sufficient to prevail on a claim for damages. Rather, to prevail on a claim for damages under Section 504, a student must establish that the school district violated Section 504 “intentionally or with deliberate indifference.” After clarifying the legal standard, the Ninth Circuit remanded the case to the district court to allow the family to amend their complaint.

The family then filed an amended complaint against the DOE and its Superintendent. The family alleged the DOE failed to provide the students with reasonable accommodation for their disabilities in the form of autism-specific special education services and that it failed to design their IEPs to meet the students’ needs as adequately as the needs of non-disabled students were met. The family further alleged that the DOE acted with deliberate indifference. The district court granted summary judgment in favor of the DOE, finding that the family failed to present sufficient evidence to support their claim. The family appealed the decision to the Ninth Circuit.

The Ninth Circuit reversed the district court’s grant of summary judgment. It found that the family had presented evidence that raised a question regarding whether the DOE violated Section 504 with “deliberate indifference” by failing to adequately investigate whether autism-specific services that the students needed in order to access their education were available as a reasonable accommodation. In addition, the evidence also raised a question regarding whether the DOE knew that its failure to design the
students’ IEPs to include autism-specific services was likely to result in a violation of their federally protected rights and whether it failed to act upon that likelihood. As a result, the Ninth Circuit reversed the district court’s grant of summary judgment and remanded the case to be heard in the district court.

This case demonstrates that if a school district knows that a student requires certain special education services, but does not act upon that knowledge, it could be subject to a claim for damages under Section 504.

If you have any questions regarding this matter, please call one of our five offices.

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