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Good Grades Do Not Insulate Teachers from Personal Liability for Inadequate Accommodation of Student with Disability

By Sergio D. Simoes, Esq.

It is a common misconception among faculty and administration that they may not be held individually liable for failing to accommodate students with disabilities. This question of personal liability was clarified in *Grinbaum v. Township of Livingston Board of Education*, A-4805-04T2 (May 10, 2007). In this unpublished decision, the Superior Court of New Jersey, Appellate Division, partially affirmed the award of a jury against a Board of Education and individual teachers in a civil rights and discrimination suit brought by a student.

The student was a senior in high school when the action was commenced. He suffered from a debilitating condition which paralyzed both of his hands and resulted in a lack of muscle coordination. It did not hamper the student's intellectual capabilities: the student ranked in the top ten percent of his class; took advanced placement classes; and was a member of at least three honor societies.

To meet his needs, each year, the Board prepared Individual Accommodation Plans ("IAP"), which outlined the accommodations made for him during the school year. Accommodations included making textbooks available to him in each class, extending time limits for essay tests and quizzes, providing him a note buddy, not penalizing him for speed and accuracy in computer courses, and providing a voice recognition software program. The student's father challenged the IAP in the Office of Administrative Law asserting that the Board did not provide him with adequate technology to meet his needs and did not give him additional time to complete tests and class assignments. This challenge was subsequently settled.

Thereafter, the student's father brought suit against the Board and individually against the Superintendent, the Principal, the student's Math teacher, French teacher, and Middle School Vice Principal, alleging that during his schooling, the student was not accommodated as required by the Federal Rehabilitation Act of 1973, the Americans With Disabilities Act, and the New Jersey Law Against (cont'd ►)

Discrimination. A jury trial was held before the Superior Court, Law Division. Before the matter was submitted to the jury, however, the Court dismissed the Superintendent and Middle School Vice Principal as defendants in the action.

At trial, the jury heard evidence concerning the student's academic history. In second grade, for instance, he was made to wear a helmet during recess. He admitted having a difficult time in the eighth grade due to workload. The student also testified as to in-class actions by his teachers. In the eighth and ninth grades, for example, he testified that he did not receive scientific calculator software he requested from his Math teacher. He claimed the software was required because he could not use a graphing calculator. The student also claimed that his math teacher refused to provide him with extra time to complete a test. The student testified that his French teacher refused to provide adequate assistance for an assignment that required the cutting of paper with regular scissors. In a separate event, his French teacher took him out into the hall and instructed him to write down a description of his limitations, which the student claimed embarrassed him. In another incident, the student testified that his French teacher gave his designated book to another student who never returned it. The Principal obtained a new copy of the book when the student's father complained. The student received A's and B's in his French and Math courses.

The jury also heard evidence from a psychiatrist who opined that the student was suffering from depression as a result of his experiences in school. At the conclusion of the trial, the jury found that the Board failed to provide reasonable accommodations in violation of the Rehabilitation Act, the Americans with Disabilities Act, and the New Jersey Law Against Discrimination and awarded damages in the student's favor in the sum of \$500,000. It also found the individual defendants violated the student's civil rights, and assessed damages of \$150,000 against the Principal, \$75,000 against the French teacher, and \$25,000 against the

Math teacher. The trial court subsequently reduced the award against the Board to \$250,000 and reduced the awards against the individual defendants by half. The Court also awarded plaintiff's counsel attorney fees in the sum of \$186,689.31. Both sides appealed the verdict; the student claimed that the award should not have been reduced and defendants challenged the findings of liability.

The Appellate Division affirmed the findings of the jury with respect to the liability of the Board and the individual teachers. The Court held that the student's academic success did not factor into whether or not he suffered discrimination. It found that the actions taken by the student's Math and French teachers "had the capacity to embarrass and humiliate [him] and discriminate against him because of his physical limitations. The conduct that constitutes a violation of his rights under Section 504 [of the Rehabilitation Act] or the Americans with Disabilities Act could also constitute a violation under Section 1983."

The Court found, however, that the trial court erred in submitting plaintiff's Civil Rights claim against the Principal because there was no evidence of "reckless or deliberate indifference" by the Principal towards the student's needs. It also found that the jury charge on damages was flawed and thus ordered that the defendants receive a new trial on damages. The Court affirmed the award of counsel fees against the District and remanded the matter to the trial court for further proceedings. Consequently, the Board and individual teachers were found liable for failing to provide appropriate accommodations for a student's physical condition, in spite of his success in school.

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