

## **WINTER 2014 NEWSLETTER**

### **Special Education Case Law Update**

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#### **TEXAS DISTRICT COURTS**

***C.L. v. Leander Indep. Sch. Dist.*, No. A-12-CA-589 LY, 2013 U.S. Dist. LEXIS 179400 (W.D. Tex. Dec. 20, 2013).**

The magistrate recommended granting summary judgment to the school district on C.L.'s claims under Section 504 and the ADA because the plaintiff failed to provide evidence sufficient to support a finding of professional bad faith or gross misjudgment on the part of school district personnel in their reaction to reports that C.L. was being bullied at school.

C.L., an autistic and legally blind elementary school student, left Leander ISD after an incident in the boys' bathroom in which C.L. claims that he was bullied and sexually assaulted by other students. C.L.'s mother, E.L., asserted that she had repeatedly notified school personnel that C.L. was enduring harassment from other students. The plaintiff argued that the facts supported an inference of professional bad faith and/or gross misjudgment because the school district was aware the C.L. was being continuously bullied in the classroom and bathroom and the district failed to remedy the problem. Relying on *M.P. ex re. K., v. Indep. Sch. Dist. No. 721*, 439 F.3d 865, 868 (8<sup>th</sup> Cir. 2006), for its definition of professional bad faith/gross misjudgment, the plaintiff argued that summary judgment for the school district was inappropriate because the school district knew of C.L.'s disabilities and failed to investigate disability-based discrimination and complaints, and failed to take appropriate remedial measures once notice of the harassment was provided to school authorities.

The court reviewed the evidence of E.L.'s reports of bullying and the school district's responses and found that the plaintiff failed to present evidence creating a fact issue about whether the school district was aware that C.L. was continuously bullied in the classroom or the bathroom and failed to take prompt remedial measures. The plaintiff's identification of only five specific incidents of classroom bullying, and only two incidents of bathroom bullying over the course of four years, did not establish that C.L. had been "continually harassed" at school. Although E.L. complained that C.L. was in danger of being bullied or was a likely target for bullying due to his disabilities, the record did not contain evidence of any other complaints that should have put the school district on notice that C.L. was enduring further harm or that required them to take further actions to protect C.L.

Instead, the evidence showed that, at each juncture, the alleged harassment was addressed by school district personnel quickly, appropriately, and professionally.

Appropriate remedial measures included reprimands of the offending students, calls to parents, meetings with parents, and classroom discussion of bullying and harassment.

Without considering whether the alleged incidents of bullying or harassment were connected with C.L.'s disabilities, the court held that Leander ISD did not depart grossly from accepted standards among educational professionals and that the evidence did not rise to the level of bad faith/gross misjudgment or deliberate indifference by the school district. The magistrate recommended that C.L.'s claims be dismissed with prejudice.

***Garcia v. City of McAllen*, No. 7:13-CV-460, 2013 U.S. Dist. LEXIS 176179 (S.D. Tex. Dec. 16, 2013)**

The court dismissed the plaintiff's claims, under Section 504 and the IDEA, because plaintiff had failed to exhaust administrative remedies under the IDEA by failing to make a written request for a due process hearing. The court treated the failure to exhaust administrative remedies as jurisdictional.

The plaintiff alleged claims under Section 504 and the IDEA alleging that the school district failed to update the student's IEP and failed to communicate changes in the student's diagnosis to his teachers. After the student was involved in a dispute with a teacher, the student was involuntarily transferred to a new campus. The plaintiff repeatedly requested a manifestation determination review prior to the student's transfer, but the school refused to provide such a hearing until after the student's transfer was completed.

Although the court believed that this conduct violated the IDEA, the court explained that because the plaintiff failed to contact the state educational board in order to request a due process hearing, he failed to exhaust the IDEA's administrative remedies. The court considered administrative exhaustion to be a jurisdictional requirement. Although the plaintiff requested monetary damages in his suit, which would not be available under the IDEA, the court declined to allow suit on the same facts in two different forums as contrary to the Fifth Circuit's issue preclusion rules.

The court dismissed the plaintiff's IDEA and Section 504 claims without prejudice, subject to the plaintiff's exhaustion of the IDEA's due process hearing procedures.