SPRING 2015 NEWSLETTER

FEDERAL SCHOOL LAW UPDATE

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THE FIFTH CIRCUIT COURT OF APPEALS

Ivy v. Williams, 781 F.3d 250 (5th Circuit, March 24, 2015)

Driver education was not a service, program, or activity of the Texas Education Agency (TEA), and therefore, the TEA was not required to ensure that driver education complied with the requirements of the Americans with Disabilities Act (ADA) and Rehabilitation Act.

Deafness Resource Specialist with the Texas Department of Assistive and Rehabilitative Services informed the TEA of the inability of deaf individuals like the named plaintiffs to receive driver education certificates. The TEA declined to intervene, stating that it was not required to enforce the ADA or act against private driver education schools without the US Department of Justice finding that such schools had violated the ADA.

Donnika Ivy and other deaf individuals brought a putative class action against TEA Commissioner Michael Williams seeking injunctive and declaratory relief requiring the TEA to bring driver education into compliance with the ADA.

The TEA sought dismissal based on standing and for failure to state a claim. The district court denied the motions and TEA appealed. The Fifth Circuit reversed and rendered judgment dismissing the case. Though the plaintiffs had standing, their lawsuit failed on the merits. The TEA does not itself teach driver education or contract with the schools who do so; rather, the TEA merely licenses, supervises, and regulates private driver education schools. Therefore, the Court found that driver education was not a service, program, or activity of the TEA, so it cannot be liable under the ADA. Public entities are not responsible for ensuring the ADA compliance of even heavily-regulated industries.

Kelly v. Allen Independent School District, No. 14-40239, 2015 WL 690276 (5th Circuit, February 19, 2015)

For a school district to be liable for student-on-student sexual harassment under Title IX, the school district must have actual knowledge of the harassment.

C.K., a middle school student, claimed he was sexually harassed by another male student. On December 9, 2010, C.K. reported to the assistant principal that B.H., a student who had recently re-entered the middle school after being removed for sexually assaulting a minor female, had targeted him, and had been committing various forms of teasing and harassment against him and other boys. In particular, B.H. placed his genitals on C.K. and others during gym class while

no teachers were looking. The school district investigated, and disciplined B.H. While C.K. had made other reports of bullying, no previous reports were made against B.H.

Through his parents, C.K. brought suit against Allen ISD under Title IX. Title IX provides a private right of action for individuals to sue a school district for student-on-student harassment; however, the plaintiff must show that (1) the district had actual knowledge of the harassment, (2) the harasser was under the school district's control, (3) the harassment was based on the victim's sex, (4) the harassment was so severe, pervasive, and objectively offensive that it effectively barred the victim's access to an educational opportunity or benefit, and (5) the district was deliberately indifferent to the harassment.

In this case, the Fifth Circuit Court of Appeals affirmed the district court's granting of summary judgment on behalf of Allen ISD. The undisputed facts showed that Allen ISD had no knowledge of facts that would permit the inference that C.K. faced a substantial risk of serious harassment, and that no Allen ISD official in fact drew such an inference. All reports confirmed that the harassment happened while teachers were not looking. Further, once C.K. reported the harassment, the incident was investigated, and the offending student was transferred to a Disciplinary Alternative Education Program.