WINTER 2011 NEWSLETTER

SCHOOL LAW CASE LAW UPDATE

by John Husted

United States Court of Appeals for the Fifth Circuit

***D.A. v. Houston ISD,* 2010 U.S. App. LEXIS 26289 (5th Cir. December 28, 2010)**

Facts creating an inference of professional bad faith or gross misjudgment are necessary to substantiate a cause of action for intentional discrimination under §504 of the Rehabilitation Act or the Americans with Disabilities Act ("ADA") against a school district predicated on a disagreement over compliance with the Individuals with Disabilities Education Act ("IDEA"). Further, the Fifth Circuit holds that the enforcement schemes to enforce a child's rights provided by the IDEA and §504 preclude the child from bringing such a claim through 42 U.S.C.S. §1983.

Parents brought an action claiming that the school district failed to provide special education services to their child. Among their claims were causes of action under the IDEA, §504, the ADA, and §1983. The IDEA imposes an affirmative obligation on states to assure disabled children a free appropriate public education, while §504, and the ADA broadly prohibit discrimination against disabled persons in federally assisted programs.

The parents argued that the school district violated their constitutional rights by requiring them to show greater evidence of special needs than required of non-black children. The district court granted summary judgment for the school district on the §504, ADA and §1983 claims, because the plaintiffs provided no additional proof of intentional discrimination above and beyond what was provided for their IDEA cause of action, and because §1983 offers no additional cause of action for an IDEA violation. Where a statutory regime already provides a comprehensive set of remedies for its enforcement, as the IDEA does, there is a presumption against the availability of the more general remedial measures of §1983.

***T.B. v. Bryan ISD*, 2010 U.S. App. LEXIS 25859 (5th Cir. December 20, 2010)**

If a student has a qualifying disability, but does not require special education and related services, the award of attorneys' fees under the IDEA is improper, because they may only be awarded to a "child with a disability,"—i.e., a child who needed was diagnosed with a qualifying disability *and* special education and related services.

Under the IDEA, the district court has discretion to award reasonable attorneys' fees "to a prevailing party who is the parent of a child with a disability." The IDEA defines "child with a disability" as a child with one of an enumerated list of conditions and "who, by reason thereof, needs special education and related services." T.B. was a student diagnosed with Attention Deficit Hyperactivity Disorder, but after a full and individual evaluation (FIE), it was determined that he did not qualify for special-education services. Nevertheless, in a suit against the school

district regarding his eligibility for special-education services, the district court determined that he prevailed on two issues, and he was awarded attorneys fees.

Because T.B. did not need special education services, he thereby did not meet the definition "a child with a disability" under the IDEA. Therefore, the Fifth Circuit vacated the district court's grant of attorneys' fees.

Texas Courts of Appeals

***In Re Vidor ISD,* 2010 Tex. App. LEXIS 9914 (Tex. App. – Beaumont, December 13, 2010)**

A school district's disciplinary action pursuant to Tex. Educ. Code Ann. §37.009(a), is not appealable.

The student was disciplined by the District, and did not dispute that he was subject to discipline for his misbehavior. The student filed an application for a temporary restraining order and temporary injunction regarding the administrative process. Since the student was only seeking relief from the administrative process, not the underlying claims, the court did not have jurisdiction. A district's disciplinary action is not appealable. School districts have the right to control and discipline their students. Therefore, the district court should not have issued the temporary restraining order.

***Ohnesorge v. Winfree Academy Charter Sch.*, 2010 Tex. App. LEXIS 9602 (Tex. App. – Dallas November 16, 2010)**

An open-enrollment charter school may be a public school, but it is not a public school district subject to the Texas Whistleblower Protection Act.

An employee brought a Texas Whistleblower Protection Act claim against the charter school. The Act prohibits state or local governmental entities from taking adverse personnel action against a public employee who reports a violation in good faith. The Act explicitly applies to public school districts. Even though the charter school variously refers to itself as a school district, it is only a school, not a school district, which is a political subdivision with a jurisdiction.