

CLIENT NEWS BRIEF

Student's Section 504 and ADA Claims for Damages Based on Failure to Provide Meaningful Access and Reasonable Accommodations Are Valid Despite Parents' Consent to Change Placement

In *A.G. v. Paradise Valley Unified School District*, (9th Cir., March 3, 2016) 2016 U.S. App. Lexis 3994. (A.G.), the Ninth Circuit Court of Appeals ruled that a student asserted valid claims for damages under section 504 of the Rehabilitation Act and Title II of the ADA (ADA) and reversed a lower court's dismissal of claims. The Court found that the facts demonstrated that the school district (PVUSD) may have denied the student meaningful access to educational benefits and reasonable accommodations to allow the student to remain at a general education school, even though the parent agreed to a change in placement to the district's alternative school for emotionally disturbed students. The Ninth Circuit stated "a claim that meaningful access has been improperly denied is not 'precluded or waived based on a parent's consent to an IEP.'"

While placed in a classroom for gifted students at a PVUSD general education middle school, A.G. had demonstrated aggressive, disruptive, and noncompliant behaviors, including threatening to harm herself and striking a school resource officer. Her IEP team recommended a change in placement to an alternative school, where she would participate in assorted counseling, behavior management, and special education programs. A.G.'s parents visited this alternative school and agreed it was an appropriate placement for A.G. However, A.G.'s behavioral issues worsened at the alternative school and after being arrested and criminally charged twice for aggravated assault, A.G. was moved to a private psychiatric school at the district's expense.

A few months after A.G.'s placement in the psychiatric school, her parents filed a lawsuit alleging a denial of FAPE under the Individuals with Disabilities Education Act (IDEA), Section 504 and the ADA, along with various state tort claims. The discrimination-based claims under Section 504 and the ADA related to PVUSD's alleged "failure to provide adequate accommodations" to A.G. while she was enrolled in PVUSD schools, as well as the district's decision to change A.G.'s placement to the alternative school. A.G. and her parents alleged that additional behavioral accommodations would have allowed A.G. to continue attending the general education middle school.

Although PVUSD and A.G.'s parents settled all claims under the IDEA, the parents pursued their section 504 and ADA claims, as well as state tort claims. In May of 2013, a district court granted summary judgment in favor of PVUSD and dismissed all claims.

However, the Ninth Circuit overturned the district court's dismissal of the Section 504 and ADA claims relating to meaningful access and reasonable accommodation, finding that the parents' consent to the IEP and placement at the alternative school was insufficient to waive their claims. The Ninth Circuit directed the lower court to evaluate "whether A.G.'s educational needs were met as adequately as those of her non-disabled peers." The court justices held that a student may show unlawful discrimination under Section 504 and the

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ADA by demonstrating that the school district denied her a “reasonable accommodation” necessary to obtain meaningful access to her education (i.e. a full time behavioral aide). The Court relied on the testimony of a behavioral psychologist that student may have needed further behavioral services, including a full time behavioral aide, to meaningfully access her education, and these accommodations would have allowed student to remain at the general education middle school. The Court further ruled that the parents’ failure to request the additional behavioral services did not waive PVUSD’s obligation to consider such services because parents “do not have the expertise -- nor the legal duty -- to determine what accommodations might allow A.G. to remain in her regular education environment.”

The Ninth Circuit also found plaintiffs’ claims for damages under Section 504 and the ADA were a viable dispute because the facts demonstrated the district may have acted with “deliberate indifference” by not providing a fulltime behavioral aide as a reasonable accommodation. A plaintiff seeking damages under section 504 or the ADA must show the district had notice of her need for an accommodation and failed to act. Notice can be shown by “alerting the public agency of the need” or “showing the need for accommodation was obvious or required by statute or regulation.” The Ninth Circuit held that the district court erred in failing to recognize there was a genuine factual dispute as to whether the need for the accommodation was obvious.

This case provides important guidance to school districts in regard to how to appropriately respond to a student’s behavioral problems before changing placement to a more restrictive environment. To avoid claims of discrimination under section 504 and the ADA, school districts may need to offer to conduct an FBA, develop a BIP, and offer behavior aide services in a general education school before placing a student in the more restrictive environment of an alternative school or non-public school. This case exemplifies the fact that a parent’s consent to an IEP is not enough to absolve the school district from its affirmative obligation to offer and provide reasonable accommodations to ensure equal access to a general education school.

If you have any questions regarding the A.G. decision, or about special education in general, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).