

CLIENT NEWS BRIEF

District's Filing of TROs to Prohibit Communication by Special Education Parent May Violate ADA and Section 504

In *Brason Lee v. Natomas Unified School District* (February 25, 2015), 2015 U.S. Dist. Lexis 24253, the court determined that a school district may have unlawfully retaliated against a parent for advocating on his daughter's behalf regarding special education services by filing temporary restraining orders (TROs) against the parent.

This case started out as a dispute between the parent and the District regarding the school's psycho-educational assessment of the student, which concluded that the student had a disability falling on the autism spectrum. The parent disagreed with many of the conclusions in the assessment and sent numerous communications to the District disputing the accuracy of the student's special education assessment. Additionally, the parent alleged the District failed to comply with student's Individualized Education Program (IEP) and that District staff had falsified records to conceal the noncompliance. The parent also emailed the superintendent and governing board, complaining his daughter was not receiving speech therapy services. After a year of District staff, superintendent, and governing board members receiving many accusatory communications from the parent, District's legal counsel directed the parent to send all of his communications only through counsel.

The parent subsequently filed letters with the Office of Special Education Programs (OSEP) alleging retaliation and falsification of records and also filed complaints with the National Association of School Psychologists (NASP) against the District's psychologist regarding her assessment of the student. Shortly after the District learned of parent's complaints, it filed applications for TROs in state court against the parent which, if granted, would have barred the parent from the school's campus and would have prevented him from engaging in further communications with certain District staff members.

The TROs were ultimately denied and the parent sued the District in federal district court alleging retaliation under Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA), which permit non-disabled persons to bring claims for retaliation when protecting the rights of disabled persons. Retaliation claims brought under Section 504 and the ADA are analyzed under the same standard. In order to prevail on a retaliation claim, the parent must first establish a "prima facie" case of retaliation by showing that: (1) he engaged in a *protected activity*, (2) the *District knew* he was involved in the protected activity, (3) an *adverse action* was taken against him, and (4) a *causal connection* exists between the protected activity and the adverse action. Next, the burden shifts to the District to show a *legitimate, non-retaliatory purpose* for its actions. If the District is able to demonstrate such a purpose, then the parent must prove the District's proffered reason is pretextual by showing it is not credible or that retaliation is the more likely motivation.

Here, the court determined that the parent successfully established a prima facie case of retaliation because he engaged in the protected activity of advocating on behalf of his disabled daughter by complaining about the special education services to the District staff and filing complaints with other

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agencies. The court concluded that the District had knowledge of the protected activity because it received the parent's emails and complaints. The court also found the District had taken an adverse action against the parent by filing the TROs. The court explained that the District's act of filing multiple TROs against the parent were actions "reasonably likely to dissuade a person from engaging in protected activity," namely advocating for a disabled student, and therefore may amount to actionable retaliation. Lastly, the court found a causal connection because the adverse action closely followed the protected activity. The parent had lodged numerous complaints before the District filed its TRO applications, plus one of the TROs actually listed the parent's complaint to the NASP as a basis for the TRO.

The District argued its actions were not retaliatory but were done to protect its staff members from feeling threatened, harassed, or interfered with in carrying out their duties. The court found that although the District presented evidence of non-retaliatory reasons for its actions, including a desire to protect staff members from the parent's threatening and harassing behavior, a factual issue remained regarding whether the District's rationale for filing the TROs was pretextual.

This case is a reminder that advocating for disabled students on issues related to federal and state special education rights is a *protected activity*. In this case, a school district's claim that a parent engaged in harassing and threatening behavior did not in itself prove the school district had a valid reason for limiting parent's contact with staff. Parents have a right to participate meaningfully in their children's education, and trying to limit that right could result in a legitimate retaliation claim against the school district.

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