PULLMAN &COMLEY

CHRO - A New Horizon For Students With Disabilities?

Education Law Notes

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As my colleague Rachel Ginsburg aptly foretold, Connecticut's Commission on Human Rights and Opportunities ["CHRO"] has indicated an interest in involving itself with discrimination claims concerning the schools. A recent case shows how CHRO can handle (or mishandle) matters that have previously been deemed to be the exclusive province of special education "due process" hearing officers (not to mention educators). This case also addresses several other hot issues (i.e., whether public schools are deemed to be "public accommodations" for purposes of anti-discrimination statutes, the ability of CHRO to award compensatory damages, and coverage under disability statutes for "post-concussion syndrome").

THE ALLEGATIONS

Briefly, a kindergarten student with autism and who had previously been determined to be eligible for special education and related services began attending an inter-district magnet school. The receiving school district/ magnet school operator then determined that the child was no longer eligible for such services; the magnet school continued to provide accommodations for the student, as he was determined to still have a disability under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act ["ADA"]. The parents were opposed to this change in classification, and were seeking to have their child restored to special education services via the planning and placement team process. In the meantime, the student suffered a concussion on school grounds, and his doctors recommended that he not return to school until medically cleared. It took a considerable period of time before the student was medically cleared by his doctors, as the student allegedly suffered post-concussion symptoms, as manifested by headaches, disorientation and "malaise". Due to the continued absence from school and disagreement about the adequacy of the doctors' notes, the receiving school district labeled the student as a "habitual truant", and threatened to pursue action against the parents in the courts. Subsequently, allegedly unbeknown to the parents, the receiving school district unilaterally withdrew the student from the magnet school, thus resulting in the student being returned to his "home" school district.

CHRO'S RULING

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The parents then filed a complaint with CHRO, asserting violations of a) state "public accommodations" anti-discrimination statutes (Connecticut General Statutes §46a-64), b) the ADA, c) Section 504, and d) the U.S. Constitution's Equal Protection Clause. In ruling for the parents, the CHRO hearing officer found that a public school constituted a "public accommodation" under the state anti-discrimination statutes, which appeared to be contrary to prior CHRO rulings. The CHRO hearing officer further found that in addition to the fact that autism could implicate the state and federal discrimination statutes (as a covered mental disability), the student's post-concussion syndrome would qualify as a physical disability under state anti-disability discrimination statutes. The hearing officer found that regardless of whether the student's post-concussion syndrome qualified as a disability under federal law, it constituted a "chronic" impairment (and a "perceived disability") that triggered protection under the broader state anti-disability discrimination statute. CHRO determined that the school district's allegedly unilateral withdrawal of the student from the magnet school constituted illegal disability discrimination, albeit finding that such discrimination was based upon on alleged retaliation by the school district for the parents' advocacy on behalf of their disabled child (and attempts to restore his special education status and seek accommodations for his concussion). Among other things, the hearing officer awarded the parents $25,000 in damages for "emotional distress", and ordered the removal of references to "truancy" in the child's educational records.

HOW DOES THIS IMPACT THE SCHOOLS GOING FORWARD?

Notwithstanding the actual merits of the case (or accuracy of the hearing officer's findings), this decision poses some rather broad ramifications for school districts. First, the mere fact that CHRO even adjudicated this case is highly significant. The dispute at issue seems to be one that would be more appropriate for special education "due process" proceedings. As there was an issue about the eligibility for (and exiting from) services under special education laws, it would appear that the federal special education statute's exhaustion of remedies provisions should have foreclosed CHRO from even considering this matter.

Second, the finding that a public school constitutes a "public accommodation" under the state anti-discrimination statutes departs from prior CHRO rulings, including a decision issued just one year ago in which my colleague, Stephen Sedor, successfully obtained dismissal of such claims. *CHRO ex rel. Baker v. Hartford Public Schools*, CHRO Case No. 1310347 (December 10, 2015). CHRO had previously found that public schools are not places of public accommodation because they are not open to all members of the public without qualification. CHRO's latest ruling reverses this historical interpretation and may serve to open the door to increasing claims against schools before that agency. By labeling schools as "public accommodations", CHRO may now have provided an additional mechanism for parents to obtain monetary damages from the schools.

Finally, while my colleagues Michael McKeon, Melinda Kaufmann and I have repeatedly spoken and counseled about coverage under **federal** disability statutes for post-concussion syndrome, CHRO's decision does provide another avenue (the supposedly broader **state** disability discrimination statute) for advocates seeking protections and accommodations for students who are recovering from a concussion. Unlike the

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federal statutes (Section 504 and the ADA), there is no requirement under the state anti-discrimination statutes that a disability must "substantially impair" a "major life activity" in order to support a claim of disability discrimination (or to obtain accommodations). Rather, the condition must merely be "chronic". Whether "chronic" or "substantial", a determination as to whether the recovery from a concussion is sufficiently lengthy and labored so as to require accommodations (and treatment as a covered "disability") will remain highly fact intensive and should still be made on an individualized basis.

PLEASE NOTE: This case may also serve as a reminder with respect to limits on the ability of magnet schools to involuntarily dis-enroll students.

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Tags: Americans with Disabilities Act (ADA), CT Commission on Human Rights and Opportunities (CHRO), Teacher Training