School Law for Administrators

Fourteenth Amendment

Administrators file lawsuit against superintendent for ruining their reputations and denying their due process rights

Citation: *Stanton v. Woodside, 2019 WL 4302787 (E.D. Mich. 2019)*

A federal district court in Michigan recently granted a school district superintendent's request to dismiss due process violation claims alleged him by a married couple who had both worked as principals in a school district before both alleged they were forced to resign. The court found that not only was the lawsuit barred by res judicata (the couple had previously sued and lost in state court) but also that they could not make out a due process claim when they hadn't asked (and therefore hadn't been denied) an name-clearing hearing before they both chose to resign.

John and Robin Stanton were employed in the Anchor Bay School District as principals of the Anchor Bay High School and Anchor Bay Middle School, respectively. Before the 2016-2017 school year, the Stantons received "highly effective" or "effective" ratings on their performance reviews. During the 2016-2017 school year, Mr. Stanton received several write-ups for things he considered innocuous. Mrs. Stanton also was relieved of certain duties such as making staff assignments that year.

In May 2017, a security guard at the high school, Pat Mikolowski, was moving to a different job in the school district. Mr. Stanton gave her a parting gift of a wooden penis that she had previously confiscated from a student and turned in to him. In early June 2017, Sherry Kenward, director of student services, heard about the gift and informed Joe McDonald, the director of secondary education. Kenward told McDonald that Mikolowski had complained about the gift, she and her husband were upset by it, and she had cried all weekend about it. Kenward also informed McDonald that Mikolowski was leaving the current job because of her treatment by Mr. Stanton. Mr. Stanton was subsequently given a rating of "ineffective" in his performance review.

In June 2017, Mr. Stanton was called into a meeting with Superintendent Leonard Woodside, McDonald, and two other administrators. Woodside allegedly threatened Mr. Stanton that he had to resign within 24 hours or Woodside would file charges against him and his performance evaluations reflecting Mikolowski's claims would be made public. Mr. Stanton resigned in return for having his performance evaluation changed back to "effective."

In July 2017, Mr. Stanton received a call from Mikolowski who said she never made a complaint about him and was not upset about the gift. She said she and her husband had laughed about it. She said Kenward had called her into a meeting and sent her for an "interrogation" by Woodside. Mikolowski told Mr. Stanton she did not want to pursue charges of sexual harassment against him.

Mr. Stanton said that Woodside continued to investigate him despite Mikolowski's assertions. Mr. Stanton found a job as principal of a different school in another district. He claimed that Kenward or Woodside called his new employer and told them about his sexual harassment charges. Three days into his new job, Mr. Stanton found out his contract would be terminated. He allegedly tried to commit suicide, and then ultimately resigned.

Mr. Stanton claimed that the false charge of sexual harassment was disseminated by Woodside, and that anyone who asked was told that was why he left Anchor Bay School District. Mrs. Stanton claimed her reputation was also damaged by the claims against her husband. After he resigned, Mrs. Stanton received a rating of "minimally effective" in her performance review. The Stantons believed that Kenward informed the school district that Mrs. Stanton bullied her staff, retaliated against them, and was a "bitch."

The Stantons filed a lawsuit against the school district, Woodside, and Kenward in state court claiming defamation, intentional inflection of emotional distress, interference with advantageous contractual relations, breach of contract, and fraud. The court dismissed all the claims against the school district and Woodside but allowed the claims against Kenward to proceed. Kenward appealed the court's decision. The Stantons did not appeal the court's decision to dismiss their claims against Woodside or the school district.

The Stantons filed a lawsuit in January 2019 against Woodside in federal court. They claimed violations of their due process rights under the Fourteenth Amendment as a result of not being allowed to have a name-clearing hearing when their jobs ended. Woodside asked the court to dismiss the complaint.

The court granted Woodside's request to dismiss the lawsuit. Woodside argued that the complaint should be dismissed because:

1) The lawsuit was barred by the doctrine of res judicata (already having been judged in court);
2) The claims were barred because they were not asserted in the state court in violation of a Michigan court rule;
3) The Stantons did not have a legitimate claim because they resigned, did not request a hearing, and did not use the available procedural safeguards;

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Least Restrictive Environment

Parents argue child should remain in general education classroom despite challenges

Citation: *A.B. by and through Jamie B. v. Clear Creek Independent School District, 2019 WL 5092471 (5th Cir. 2019).*

The Fifth U.S. Circuit Court of Appeals has jurisdiction over Louisiana, Mississippi, and Texas.

The Fifth U.S. Circuit Court of Appeals recently affirmed a lower court's decision, denying a school district judgment without a trial in a case in which the parents of a disabled student filed an administrative hearing request after the district proposed moving their child from a special education program that took place largely in the general education classroom to one that took place largely outside of the general education setting. The appeals court agreed with the lower court's decision (which had upheld the administrative finding) that moving the child to a more restrictive environment would violate the Individuals with Disabilities Education Act (IDEA) by failing to educate the child in the "least restrictive environment." Therefore, the appeals court affirmed the lower court's decision.

A.B. is a child with autism, ADHD, and other learning disorders. He attends school in the Clear Creek Independent School District. In that school district, there are three special education programs available to children who receive special education. Two are relevant in this case. One is called "Learning to Learn" and is used for more significantly disabled children and involves placement in a special education setting for a majority of the time. The other program is called "Social Communication" and involves placement in a general education setting for a majority of the time, with the provision of special education-related resources and accommodations.

When A.B. was in first grade in the 2014-2015 school year, he attended classes in the Learning to Learn program. Because of the good academic and linguistic progress he made and because his behavior problems lessened over the year, his IDEA team decided to promote him to the Social Communication program for the following year. A.B. was successful in second grade in the Social Communication program, but the parties began to differ in the third grade. In that year, again in the Social Communication program, A.B. had a special education aide with him at all times, didn't follow the general education curriculum and was not expected to keep pace with his peers in the general education classroom. Moreover, he received nearly all instruction from special education support staff rather than the main classroom teacher.

A.B.'s behavior in third grade took a turn for the worse and he increasingly avoided doing his work and instead did unproductive and sometimes disruptive things like going to the bathroom frequently, playing with the window blinds, and flopping on the floor screaming. As a result, in October, his IDEA team convened and recommended that he be placed back in Learning to Learn for his core academic work. His parents objected to

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4) Woodside was entitled to qualified immunity; and
5) Abstention was appropriate under *Younger v. Harris.*

The court found it necessary to address only his first and third argument, which covered dismissal of the lawsuit.

RES JUDICATA

The court agreed that the Stantons' claim was barred under res judicata. The doctrine "bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not" *(Buck v. Thomas M. Cooley Law Sch.).*

The court noted that every requirement for res judicata was satisfied here: 1) the current lawsuit involved parties that were involved in the state lawsuit; 2) the same facts and evidence were essential to both lawsuits and arose out of the same incidents; and 3) the Stantons could have included their due process claim in the state court complaint. Therefore, the court found that the current claim was barred under res judicata.

DUE PROCESS CLAIM

The Fourteenth Amendment's Due Process Clause protects individuals from being deprived of life, liberty, or property without due process of law. Liberty interests include a person's "reputation, good name, honor, or integrity" *(Ludwig v. Bd. Of Trustees of Ferris State Univ.).* To establish a violation of procedural due process rights, the Stantons had to show that they were deprived of one of the liberty interests without the required procedural protection. A person whose interest in his honor or reputation has been deprived must have an opportunity to be heard to disprove any charges against them *(Chilingirian v. Boris).* A hearing known as a name-clearing hearing is required if an employer makes a false claim about an employee regarding their termination. However, the court noted, "in order to be deprived of a liberty interest without due process, an aggrieved employee *must request and be denied* a name-clearing hearing."

In their complaint, the Stantons did not allege that they ever requested a name-clearing hearing. The court found that "[t]his is fatal to their claim."

The Stantons argued they were not required to request a name-clearing hearing because they involuntarily resigned. However, they did not cite an authority to support this argument. Therefore, since they failed to request name-clearing hearings, the Stantons were unable to assert their procedural due process claim against Woodside. The court, therefore, granted Woodside's request for dismissal.

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this, believing that his behavior would further deteriorate without the demonstrated good behavior of the children in the general education classroom. They argued that the move to Learning to Learn violated the IDEA's requirement to educate children in the "least restrictive environment" possible in order for the child to progress.

The parents initiated an administrative due process hearing, thus keeping A.B. in the general education classroom for the remainder of the school year. With special education accommodations and services, A.B.'s behavior improved substantially over the course of the year and he also made academic progress.

At the hearing, the hearing officer found that the district's decision to move him to the more restrictive classroom violated the IDEA. Thus, the hearing officer ordered the school to keep him in the general education classroom with the required supports. The parents then filed a lawsuit seeking attorney's fees as prevailing parties. The school district countersued, seeking reversal of the hearing officer's decision, and moving for summary judgement.

The lower court denied the district's request to reverse the hearing officer's decision. It found that while A.B. was academically behind his peers, he continued to progress and improve in the general education setting. Therefore, the court agreed that moving him to a more restrictive setting would violate the IDEA's requirement that children be placed in the least restrictive environment. The school district appealed on the summary judgement decision; the attorney's fees determination was still to be made.

While the family argued that the appeals court didn't have jurisdiction, the court started by explaining that even though the attorney's fees award question was still open and was not in question in the district's appeal, the appeals court still had jurisdiction because in essence, this was an "appeal from an administrative determination, not a summary judgment." The court further noted that "the present appeals goes to the merits of the district court's order effectively affirming the hearing officer's decision." This was a final ruling, and therefore, gave the appeals court jurisdiction over the appeal.

Next the appeals court turned to the merits of the case, explaining first that its role is to review the lower court's ruling for clear error. The key question in this case was whether the district's placement of A.B. in the more restrictive Learning to Learn program would comply with the IDEA's requirement that children be educated in the "lease restrictive environment." Courts consider this requirement by asking whether education in a regular classroom with supplemental aids and services can be achieved satisfactorily, and next whether the school has mainstreamed the child to the maximum extent appropriate.

The district argued that it shouldn't be required to keep A.B. in the regular education classroom despite the progress A.B. made there because A.B. was not participating in any of the education activities of the general education classroom and was instead receiving instruction only from his special education support team, was learning a different curriculum, and was subject to different standards. The district pointed to an earlier ruling by the appeals court in *Daniel R.R.* where the court had concluded that a child who was not receiving academic or other benefits from being in the regular classroom did not need to be educated there under the law.

But while the court acknowledged its earlier ruling, it found that the facts here were different. In this case, the court noted that the evidence showed that the district was able to accommodate A.B. in the general education classroom and help him make progress whereas the student in the other case hadn't made progress. The court found that the relevant question was whether education in the regular classroom, with aids, could be achieved satisfactorily. The evidence showed that it could. It noted also that there are benefits beyond the academic that can come from placement in the regular education classroom, so analysis doesn't just stop at the instruction and curriculum.

Moreover, in A.B.'s case, the court found that he showed progress and improvement across the spectrum, making both academic and social and behavioral improvement while being placed in the general education setting, showing that while there was "no doubt that A.B. was largely benefitting from the attention and personalized instruction that he received. . . that does not mean that he would have done just as well in the Learning to Learn classroom, where student behavior was markedly worse." A teacher had even testified that placing A.B. in the Learning to Learn classroom would likely have caused him to regress. Under these circumstances, the appeals court found that there was no reason to believe that the lower court erred in its decision on this question.

Turning to the district's argument that it has given A.B. more than what the IDEA requires in terms of aids and supports, the court found that the district's citation to *Brillon v. Klein Independent School District* was misplaced because again in that case, the child in question had failed to make any progress in the general education setting despite extensive aids and supports. A.B.'s case was different because he was able to make marked improvements, though he did require special education services. It wasn't a clear error to conclude that the general education classroom was the least restrictive environment based on this argument. Finally, the district argued that A.B.'s placement in the general education classroom was disruptive even though his behavior had improved because he was essentially receiving separate instruction and curriculum from his special education support teacher while the other children tried to learn from the main teacher. But the appeals court found no clear error by the lower court in upholding the administrative decision that this factor alone didn't require placement in a more restrictive setting.

Thus, the appeals court concluded that the record showed that A.B. could be educated satisfactorily in the regular classroom and therefore the district's proposed placement in a special education classroom would violate the IDEA's requirement to place him in the "least restrictive environment" appropriate. The appeals court, therefore, affirmed the lower court's decision, upholding the findings from the administrative hearing.

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Discovery

Court orders mother, litigant, to allow access to her iCloud account

Citation: *M.J. v. Akron City School District Board of Education, 2019 WL4918683 (N.D. Ohio 2019)*

A federal district court in Ohio has ordered the mother of a student to sign an authorization allowing a magistrate judge to access her iCloud account in order to review video of an incident that was at the heart of litigation against the district. In the case, the mother along with other plaintiffs had sued the school board over an alleged "scared straight" program that was allegedly carried out in district buildings by a man posing as a police officer. The court found that the mother, by joining in the litigation against the district, had an obligation to preserve relevant evidence, including access to her phone or iCloud account where there was allegedly video evidence.

M.H. was the mother of a child who attended school in the Akron City Public Schools. Christopher Hendon was a man who was later found to have posed as a police officer on several occasions, gaining access to various school buildings and students as he engaged in a "scared straight" program of his own design. In this suit, the school district has asked the court to order M.H. to provide access to her cell phone or to her iCloud account based on witness testimony that she was involved in and videoed the interaction between Hendon and her child.

M.H. does not dispute that she used her phone to video at least a portion of the encounter between her child and Hendon on April 7, 2017, but that video, which is 41 seconds, shows only Hendon escorting the child towards the school office and M.H. is largely silent during the video. While M.H. has represented that this video snippet represents the entirety of video she captured on her phone, the district argued to the court that several witnesses have testified in depositions and will testify at trial that they observed M.H. recording for a longer period of time, recording in the office, and laughing and encouraging Hendon as he interacted with her child who was crying. These witnesses included the child's teacher who walked with the group to the office and witnessed M.H. recording the entire time.

When M.H. told the district that she could not produce her phone because it was no longer in working order and could not access her iCloud account because she had forgotten the password, the district's attorneys drafted an authorization which proposed that M.H. direct her service provider to provide access to her iCloud account for the period from January 1, 2017 to December 31, 2017. When M.H. refused to sign the authorization, the district advised the court of the discovery dispute.

The court considered the dispute, explaining that under federal rules governing discovery, the scope of discovery is "extremely broad" and can compass "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case," citing the U.S. Supreme Court's decision in *Oppenheimer Fund Inc. v. Sanders*. The court noted that the "expansive nature of discoverable matter applies with equal force to Electronically Stored Information" including information stored on a person's cell phone or elsewhere that can be translated into a usable format.

The court cautioned that courts must guard against undue intrusiveness particularly when dealing with cell phones and other electronic data storage means given the greater risk of invasion of privacy. Thus, "mere skepticism that the opposing party has not produced all relevant information or has not been forthcoming in discovery responses alone," the court noted, "does not warrant a wholesale forensic examination of the contents of electronic storing devices."

With this in mind, the court considered the discovery dispute at hand, noting that as an initial matter, there was not any real dispute as to whether a recording of the events was well within the scope of permissible discovery. Additionally, the court noted that the plaintiffs did not challenge that there were witnesses who saw M.H. make a much longer recording than the 41 second recording she produced. But the plaintiffs did argue that the authorization sought by the district was overly broad and unduly invaded M.H.'s privacy.

The court agreed. It found no reason for the district's request for authorization to obtain access to electronic data for a full year period when the approximate date of the incident in question was known. Thus, the court reduced the authorization to the period of 14 days before and after April 7, 2017. As to M.H.'s privacy concerns, the court was not unsympathetic, but noted: "As a litigant, M.H. had a duty to preserve evidence within her control that is relevant to current or future litigation." This included her cell phone or the data stored on it or in her iCloud account. But, to limit the intrusion on M.H.'s privacy, the court determined that only the magistrate judge would be given access to M.H.'s account and would review the data and share only relevant content, if any was found, with the defendants.

Thus, the court ordered the defendants to provide a modified authorization in accordance with the court's ruling and for M.H. to provide the fully executed authorization within a week after receiving it.

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