Chicago Daily Law Bulletin.

Serving the city's law profession since 1854

February 12, 2018

Student who moved out of district can't stay at school

By Patricia Manson
Law Bulletin staff writer

A Naperville public school district did not violate anti-discrimination law when it blocked a student who had moved outside the district from remaining at her high school for her senior year, a federal judge held.

In a written opinion last week, U.S. Magistrate Judge Jeffrey T. Gilbert granted summary judgment in favor of Naperville Community Unit School District 203 in a lawsuit brought by the student.

Gilbert sidestepped many of the student's arguments, finding her discrimination claim failed even assuming she were a qualified individual with a disability who had been denied a reasonable accommodation.

Gilbert did not determine whether the student — identified as H.P. — is an individual with a disability. H.P. has been diagnosed with epilepsy and has been treated for anxiety, depression, obsessive-compulsive disorder and sleep disorders.

Gilbert also did not determine H.P. is a qualified individual with a disability as defined by Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. Such an individual must meet the essential eligibility requirements for participating in a public entity's programs.

And Gilbert did not determine whether District 203 denied H.P. a reasonable accommodation by refusing to let her attend Naperville Central High School during the current school year. He wrote that H.P. cannot show the school district would have waived its residency requirement and allowed her to remain at Naperville Central if she were not disabled.

Also, he wrote, H.P. does not allege her move outside the school district was based on any disability.

Gilbert noted H.P. went to live with her father in Lisle after her mother died in May 2016. District 203 did not learn H.P. had moved until after the 2016-17 school year.

"She cannot attend [Naperville Central High School] because she does not reside in District 203, not because she has or may be a person with a disability, and the fact that she resides outside

the [d]istrict has nothing to do with her alleged disability," Gilbert wrote Thursday.

He agreed with H.P. that District 203 could have chosen to accommodate her.

A nonresident student may attend school in an adjacent district if both districts agree and when the placement is requested "for the student's health and safety," Gilbert wrote, quoting the Illinois School Code.

H.P. lives in Community High School District 99, which is adjacent to District 203.

But Gilbert wrote he could not base his ruling on H.P.'s contention in a court filing that there is "nothing morally right" about District 203's refusal to waive its residency requirement.

"The statutes that Congress passed as the ADA and the Rehabilitation Act do not give [p]laintiff a cause of action against [d]efendant for refusing to allow [p]laintiff to finish high school at [Naperville Central] even though she no longer residents in District 203 regardless of whether that would be a kinder, more caring and more humane way to approach the issue," Gilbert wrote.

"Therefore, even if [d]efendant's decision may seem callous and insensitive, it does not violate the ADA and the Rehabilitation Act."

H.P. is represented by Jeffery M. Hagen of the Law Office of Jeffery M. Hagen in Lisle.

Hagen said he understands how Gilbert reached his ruling, but that he disagrees with the result.

H.P. did well at Naperville Central, Hagen said, and has been struggling at Downers Grove North High School during the current school year.

"From her freshman to her junior year, she made a lot of progress," he said.

He said he is disappointed District 203 did not grant H.P. the accommodation that would have allowed her to continue to make progress at Naperville Central.

Hagen said he is also disappointed the district did not waive the residency requirement even if it did not believe H.P. was entitled to an accommodation.

"It's a shame that the powers-that-be at that school could not see that moral right," Hagen said.

Noting H.P.'s senior year ends in a few months, he said he is weighing whether it is worthwhile to ask Gilbert to reconsider his ruling or to challenge the ruling before the 7th U.S. Circuit Court of Appeals.

The lead attorney for District 203, Frank B. Garrett III of Robbins Schwartz Nicholas Lifton & Taylor Ltd. in Joliet, said his client is pleased Gilbert ruled it is not required to accommodate a student by allowing her to enroll in a school she is not eligible to attend.

While H.P.'s case presented a "difficult situation," Garrett said, District 203 must apply the same rules to everyone.

"It's consistent with our policies of not allowing non-resident students to enroll," he said.

The case is *H.P. v. Naperville Community Unit School District 203,* No. 17 C 5377.

©2018 by Law Bulletin Media. Content on this site is protected by the copyright laws of the United States. The copyright laws prohibit any copying, redistributing, or retransmitting of any copyright-protected material. The content is NOT WARRANTED as to quality, accuracy or completeness, but is believed to be accurate at the time of compilation. Websites for other organizations are referenced at this site; however, the Law Bulletin Media does not endorse or imply endorsement as to the content of these websites. By using this site you agree to the Terms, Conditions and Disclaimer. Law Bulletin Media values its customers and has a Privacy Policy for users of this website.