

## **A.J.T. v. Osseo Area Schools, Independent District 279**

Parents of A.J.T. moved from Kentucky to Minnesota in 2015 knowing exactly what education their child needed and contacted school administrators in various districts to ensure that the school they picked would provide A.J.T. with appropriate instruction. A.J.T. suffers from a severe seizure disorder and qualifies for special education. Because of her disability, the student requires an altered school day schedule starting at noon so she can learn during a timeframe when her seizures are reduced. She also requires a full day of school to make adequate progress. Parents came to an agreement with Osseo Area Schools prior to their move that it would provide AJT a full school day, but the District reneged after their move and enrollment and offered only a shortened day of school unrelated to AJT's needs. A.J.T. received only four hours and fifteen minutes of instruction daily compared to the full six and a half hours that her non-disabled peers received. The parties attempted many team meetings and conciliation conferences but could not reach an agreement. Osseo Area Schools initiated a Due Process Hearing against the Parents on February 1, 2019 to further shorten AJT's school day. Parents retained the School Law Center (SLC) as counsel and an expert to complete an Independent Educational Evaluation ("IEE") for A.J.T., prompting the District to voluntarily withdraw their complaint on March 9, 2019.

Despite the IEE recommendation for significantly increased communication services, proper communication technology, and a full day of instruction, the District refused to provide a full day of school and sought to further reduce her already shortened school day. Parents, with the assistance of SLC, filed a Complaint and Request for a Due Process Hearing on September 14, 2020 for violations of the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. The latter two claims were dismissed as outside of the authority of a special education hearing officer, and the case progressed under the IDEA for failure to provide a free appropriate public education ("FAPE") by denying repeated requests for a full school day and developing an IEP that did not address all of AJT's individualized needs. An administrative hearing commenced on February 9, 2021 with five days of testimony from District staff, AJT's father, multiple expert witnesses, and thousands of pages of exhibits. All witnesses established the conclusion that AJT cannot attend school before noon without jeopardizing her medical condition, that she needs a full day of school to make adequate progress, and that the decisions to shorten her school day were made outside of the IEP Team without input from her Parents, her teachers, or her medical providers, and unrelated to her individual needs. The only outlier on the core issue was a neurologist from Tennessee hired by the District who never met or evaluated AJT, never spoke with her Parents or teachers, and had not read the full educational or medical records, who testified that an hour per day of instruction would be enough for AJT.

On April 21, 2021, the Administrative Law Judge appointed by the Minnesota Department of Education ruled in favor of A.J.T. and her Parents, finding that Osseo Schools denied the student a FAPE and ordered the District to provide her a full school day, from 12:00-6:00 pm, 495 hours of compensatory education services to make up for lost instruction over the previous two years, and a trial of communication technology that was first recommended in the 2019 IEE. The ALJ specifically found the District's reasons to refuse to provide a full school day on the modified schedule AJT needs were "more pretextual than real" recognizing that the student's current IEP was inadequate and inappropriate based on her individualized needs. The District was more concerned with "the need to safeguard the ordinary end-of-the-workday departure times for its faculty and staff" rather than following an individualized

assessment of A.J.T.'s needs. In fact, the District could not offer a colorable explanation for their decisions to reduce A.J.T.'s school day. The ALJ identified several changes that were ordered to be added to the IEP immediately, including increased instruction, provision of communication technology and compensatory education, and discrete trial training.

The District did not follow the administrative orders and Parents again had to resort to legal remedies. They filed two complaints with the Minnesota Department of Education for failing to implement the Administrative Order and continued lost instruction. Due to the COVID-19 pandemic, A.J.T. did not attend school in-person because she is vulnerable to disease and her online learning plan was disturbingly non-existent. Contrary to the IEP, A.J.T. received no educational services from March 2020 to July 2021. The Parents hoped the previous Due Process Hearing would correct these recent inadequacies as the school was ordered to provide compensatory education but unfortunately, it did not. After an investigation, on October 1, 2021, MDE found that the IEPs did not address appropriate modifications for distance learning and the District must provide additional compensatory services to make-up for services missed over the period of school shut-downs. MDE did not enforce the Administrative Order because the District was "trying" to get ordered services in place.

Meanwhile, Osseo Area Schools appealed the administrative decision to the federal District Court of Minnesota on June 21, 2021 to seek reversal of the decision in its entirety, expending significant additional taxpayer and insurance funds to finance continued litigation against the family. The Parents initiated a separate lawsuit against Osseo Area Schools for discrimination and retaliation against them and AJT on the basis of her disability under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

In the special education case the Eighth Circuit Court of Appeals affirmed the decision of the federal district court on March 21, 2024. *Osseo Area Schools v. A.J.T.*, 96 F.4<sup>th</sup> 1062 (8<sup>th</sup> Cir. 2024). The Court determined that an IEP must be "tailored to the unique needs" of the individual student and "appropriately ambitious" in order to be substantively adequate. The Court rejected "the notion that the IDEA's reach is limited to the regular hours of the school day. Neither the District nor *amici* identify anything in the IDEA implying – let alone stating – that a school district is only obligated to provide a FAPE if it can do so between the bells." The Court was convinced that A.J.T. did not receive a free appropriate public education despite the short school day because she made *de minimis* progress overall, regressed in toileting skills, and "would have made more progress with evening instruction." The Court was unconvinced by the District's arguments that her progress was significant in many areas and that even minimal progress was "remarkable" given her disability, because it could point to only slight progress in a few areas, she met none of her annual goals between 2016 and 2020, and her limited progress and regression "was both predictable and known" by the District over time. The Court also concluded from the District's own records that "A.J.T. regressed in toileting and that it removed her toileting goal for lack of time in the short day – not for lack of ability to improve. A.J.T.'s toileting ability is essential for her to live a healthy and dignified life, and the District's failure to take steps to address that goal violated its obligation to provide a FAPE." Finally, the Court decided that asking whether A.J.T. would have made more progress with evening instruction "isn't about maximizing her potential – it's about whether the District's purely administrative decision not to provide evening education caused her *de minimis* progress and regression" and that "[t]he expert testimony shows that the District's choice to prioritize its administrative concerns had a negative impact on A.J.T.'s learning." In addition, "[n]one of the District's explanations for refusing to provide evening instruction have ever been grounded in A.J.T.'s

individual needs” and it failed to offer any cogent and reasonable explanation for its decisions. The District’s petition for rehearing *en banc* was denied.

In the disability discrimination case the Eighth Circuit Court of Appeals also affirmed the decision of the federal district court on March 21, 2024. *A.J.T. v. Osseo Area Schools*, 96 F.4<sup>th</sup> 1058 (8<sup>th</sup> Cir. 2024). The Court determined that the District did not act in bad faith or exhibit gross misjudgment so as to establish violation of the ADA and Rehabilitation Act based on *Monahan*, a 1982 Circuit precedent. The Court decided that “[c]laims under Section 504 and the ADA live and die together” because the enforcement, remedies and rights are the same. The Court concluded that, when ADA and Section 504 claims are based on educational services for disabled children, a school’s “simple failure to provide a reasonable accommodation is not enough to trigger liability” but a plaintiff “must prove that school officials acted with ‘either bad faith or gross misjudgment’” that “requires ‘something more’ than mere non-compliance with the applicable federal statutes.” The Court also found that “[t]he district’s ‘statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent.’” However, the remainder of the opinion is the most encouraging. The Court acknowledged that A.J.T. “may have established a genuine dispute about whether the district was negligent or even deliberately indifferent, but under *Monahan*, that’s just not enough” because the District’s “non-compliance does not amount to a deviation ‘so substantial’ that it demonstrates ‘wrongful intent.’” The Court could not conclude that the District ignored A.J.T.’s needs or delay efforts to address them, “even if the efforts were inadequate,” where officials met with her parents, updated her IEP annually that included a variety of services, and offered summer programming. In an apologetic conclusion, the Court found “A.J.T. has failed to identify conduct clearing *Monahan*’s bar, so we are constrained to hold that summary judgment was proper.” The Court then explained why it applied “such a high bar for claims based on educational services when we require much less in other disability-discrimination contexts” by describing *Monahan* as a lesson in why courts should not add provisions to federal statutes, where the Court “speculated that Congress intended the IDEA’s predecessor to limit Section 504’s protections, and without any anchor in statutory text, we added a judicial gloss on Section 504 to achieve that end.” However, “Congress rejected *Monahan*’s premise just a few years later” in the Handicapped Children’s Protection Act and *Monahan* has been questioned by other courts and commentators. In the end the Court lamented: “But for the time being, it remains the law of our circuit.” A.J.T.’s petition for rehearing *en banc* was denied and a petition for certiorari to the U.S. Supreme Court on this important issue is underway.

**Update February 27, 2025:** certiorari was granted to SCOTUS on the issue of the improperly heightened standard applied in the Eighth Circuit to bring 504 and ADA claims for students with disabilities.