1996 WL 197690
United States District Court, N.D. Illinois, Eastern Division.

In re: JOHN DOE, by and through his parents and next friends Joe and Jane Doe, and the Class of all others similarly situated, Plaintiffs,
v.
BOARD of EDUCATION of OAK PARK RIVER FOREST HIGH SCHOOL DISTRICT 200, et al., Defendants.

No. 94 C 6449.
|
April 22, 1996.

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** This matter is before the court on the plaintiff's motions for reconsideration of this court's October 11, 1995 and February 15, 1996 judgments in favor of the defendant. For the reasons set forth below, the plaintiff's motions are denied in part and granted in part.

LEGAL STANDARD

Motions for reconsideration generally serve a very narrow function and must be supported by a showing of extraordinary circumstances justifying relief from judgment. *Bally Export Corp. v. Balicar, Ltd.,* 804 F.2d 398, 4000 (7th Cir. 1986). The rulings of a district court are not to be viewed "as mere first drafts, subject to revision and reconsideration at a litigant's pleasure." *Quaker Alloy Casting Co. v. Gulfco Industries, Inc.,* 123 F.R.D. 282, 288 (N.D.Ill 1988). Rather, motions for reconsideration are designed to correct manifest errors of law or fact or to present newly discovered evidence. *Publishers Resource, Inc. v. Walker-Davis Publications, Inc.,* 762 F.2d 557, 561 (7th Cir. 1985). Accordingly, a motion for reconsideration is an "improper vehicle to introduce evidence previously available or to tender new legal theories." *Bally,* 804 F.2d at 404; *see also Quaker,* 123 F.R.D. at 288 (reconsideration of final rulings will not be granted to allow the losing party to rehash oral arguments or to present new legal arguments or facts which the party could have presented during the pendency of the underlying motion). With respect to the present motion for reconsideration, the court will address the parties' contentions with these principles in mind.

DISCUSSION

Plaintiff John Doe, a learning disabled freshman at Oak Park River Forest High School ("OPRF"), brought an eight-count complaint against Defendant Board of Education of Oak Park River Forest High School (the "Board") after the Board expelled Doe for possessing marijuana at an OPRF freshman dance. On October 11, 1995, this court granted summary judgment in favor of the defendant as to Counts I-VII of the plaintiff's complaint. On February 15, 1996, this court denied summary judgment in favor of the plaintiff as to Count VIII. The plaintiff now seeks reconsideration of both decisions. However, given the requirement set forth in Rule 59 of the Federal Rules of Civil Procedure that motions for reconsideration be filed within 10 days after the entry of judgment, the plaintiff's motion with respect to the October 11, 1995 judgment is denied. Accordingly, the remainder of this opinion relates solely to the February 15, 1996 decision.

In our February 15, 1996 opinion, this court recognized that the protections of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401 *et seq.,* may be attenuated where special education students engage in misconduct unrelated to their disabilities. Although the IDEA sets forth a general directive that a free and appropriate public education ("FAPE") must be made available to all students with disabilities, the court observed that such a directive cannot be absolute, and under some circumstances (such as can be found in the present case), the right to a FAPE can be forfeited. In so concluding, the court noted the undesirable double standard which would otherwise result by affording disabled students free reign to commit wrongful acts without the fear of repercussion which is thrust upon students without disabilities. The court further noted the strain which would be placed on the school district should they be required to expend precious resources to continue providing special services to a disabled student who is sanctioned for conduct not linked to any disability. Accordingly, the court concluded that, where a student with a disability engages in misconduct found to be unrelated to that disability, the school district is entitled to

treat that student as if he had no disability. This is so even where the disabled student faced expulsion and the cessation of educational services.

***2** The plaintiff, in asking the court to reconsider this portion of its February 15, 1996 opinion, cites to a recently published opinion letter issued by the Office of Special Education Programs ("OSEP"). *See* 23 IDELR 894-95. The OSEP opinion letter addresses the issue of whether a school district must continue to provide services to special education students who have been properly expelled. *Id.* OSEP responds in the affirmative, pronouncing that "under the free appropriate education requirements of Part B of the [IDEA]... all States receiving funds under Part B must continue to provide educational services to students with disabilities during periods of long-term suspension or expulsion from school *for misconduct that is determined to be unrelated to their disability.*" *Id.* at 895 (emphasis added). The opinion continues:

> This Departmental policy is based on the requirement under IDEA that, as a condition for receipt of funds, States must ensure that FAPE is made available to all eligible children with disabilities in mandated age ranges; the statute does not include any exception for children who have been long-term suspended or expelled. This policy is further supported by legislative history of the Education of the Handicapped Act [the predecessor statute to IDEA] and by relevant judicial interpretations of the FAPE requirements in Part B.

Id.

Although we do not wholly agree with the policies endorsed by the OSEP opinion letter, we do recognize that the positions taken by OSEP are entitled to deference and that the issue described in the OSEP opinion letter is virtually indistinguishable from the case at bar. As such, as to the portion of this court's February 15, 1996 opinion denying the plaintiff's motion for summary judgment as to Count VIII, the plaintiff's motion for reconsideration is granted. Pursuant to OSEP's policy and reading of the IDEA, the defendant was required to provide a free appropriate public education to Doe, as a disabled student, for the duration of his expulsion. This was so, even though Doe's misconduct was assessed as being unrelated to his disability. As to all other issues, the plaintiff's motion for reconsideration is denied.

CONCLUSION

For the reasons set forth above, the plaintiff's motions for reconsideration are denied in part and granted in part.

All Citations

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