"How Dangerous Does a Student Have to Be?": Obtaining an Injunction Under Honig v. Doe

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ARE SCHOOLS A PLACE OF SPECIAL DANGER?

- "School attendance can expose students to threats to their physical safety that they would not otherwise face."
- "Students may be compelled on a daily basis to spend time at close quarters with other students who may do them harm. Experience shows that schools can be places of special danger."
- Justice Alito: *Frederick v. Morse* (2007)

SCHOOLS ARE REQUIRED TO BALANCE SAFETY WITH THE NEEDS OF STUDENTS WHO MAY BE DANGEROUS?

- IDEA imposes two requirements that are in tension with each other.
- Schools have a duty to provide an appropriate education to every student, regardless of the student's behavior.
- Schools also have a duty to maintain a safe and orderly campus.
- And the authority of school officials is constrained—on purpose.

THE ONLY SCOTUS CASE ON DANGEROUS STUDENTS IS FROM 1988?

- In *Honig v. Doe* the school argued that "stay put" did not apply when a student was dangerous. Due to the responsibility of the school to maintain safety, a school administrator could order a student's removal from the IEP placement, despite the "stay put" rule.
- This issue went to SCOTUS.

SO SCOTUS INTENDS TO REMOVE A SCHOOL'S UNILATERAL AUTHORITY?

- Yes.
- "We think it clear, however, that Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school."
- *Honig v. Doe*, 1988.
- So authority is limited, constrained.

A SCHOOL DISTRICT CONTINUES TO HAVE 10 FAPE FREE DAYS?

- It is not a denial of FAPE to fail to serve a student for ten school days, cumulatively, through the school year.
- No services are required, so long as non-disabled students would be treated the same for similar misconduct.
- See 34 CFR 300.530(b) and (d)(3).
- Count your days!

IF THE STUDENT CONTINUES TO PRESENT A DANGER OR THREAT TO THE HEALTH AND SAFETY OF SELF OR OTHERS DESPITE BEHAVIORAL INTERVENTIONS AND CAMPUS THERAPEUTIC BEHAVIOR CLASSES, DOES THE SCHOOL HAVE ANY OPTIONS?

- According to the U.S. Supreme Court, in Honig v. Doe, 484 U.S. 305 (1988), the District has the option to seek injunctive relief in a court of competent jurisdiction. As described above, that option has been expanded to allow districts to seek an expedited special education due process hearing.

ISN'T THAT EXACTLY WHAT THAT HONIG V. DOE CASE WAS ALL ABOUT? AND DIDN'T THE SCHOOL LOSE THE ARGUMENT?

- It is exactly the same fact pattern as in Honig. You are right that the school lost the argument. But the school was seeking unilateral authority to declare the student dangerous and remove the student. SCOTUS rejected the argument that a principal or school superintendent could simply order the removal of a student due to a perception of danger. Instead, the Court told us that schools would have to apply for help in a case like this. The school can seek that help from a hearing officer or a judge.

HERE'S A CASE WHERE THE DISTRICT PERSUADED THE JUDGE…

- *Wayne-Westland Comm. Schs. v. V.S.*, 65 IDELR 13, 2014 WL 509081 (E.D. Mich. 2014).
- Wayne-Westland got a Temporary Restraining Order (TRO) on October 9, 2014, followed by a Temporary Injunction on October 16.
- The evidence showed that the student was:
  - a big kid—6 feet tall, 250 pounds;
  - physically attacked a student and several staff members, spitting at and kicking them;
  - "menaced" two staff members with a pen held in a stabbing position and refused to put it down when told to do so;
  - punched a student;
  - punched the principal;
  - threatened to rape a female staff member;
  - punched another staff member in the face;
  - made racist comments toward African American staff members; and
  - punched the director of special education in the face.
- That was enough to convince the court

STRATEGIES TO PREVAIL ON HONIG INJUNCTIONS

1. Request a Honig injunction or expedited due process hearing as a tactical strategy when:
   - The IEP Team recommends a more restrictive placement due to the belief that the student is substantially likely to injure others in the school.
   - The parent will not agree.
   - The behaviors are a manifestation of the student's disability.
   - There are no "special circumstances" present.
   - The parent is threatening a due process hearing, which will trigger the traditional stay put rule keeping the student in the classroom, unless you request a Honig injunction or expedited due process hearing.

STRATEGIES TO PREVAIL ON HONIG INJUNCTIONS

2. Weigh with your legal counsel and school board whether to seek an expedited hearing versus court intervention via a Honig injunction.
3. Be prepared (factually and legally) with your legal counsel to seek a Honig Injunction as a strategy against the claim of deliberate indifference including by having in the ready a Motion for Temporary Restraining Order, Verified Complaint for Temporary Restraining Order and Injunctive Relief, and Brief in Support of Motion for Temporary Restraining Order and Injunctive Relief.

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