



Judgment on the Third-Party Complaint.<sup>1</sup> The Court heard oral argument on all motions on November 14, 1998. This memorandum is a companion to this Court's opinion dated February 19, 1999, in which the Court decided Plaintiff's Motion for Disposition. The facts of the case are set forth therein. For the reasons discussed below, the Court will grant in part and deny in part Plaintiff's/Third Party Defendants' Motion for Summary Judgment.

#### **I. STANDARD OF REVIEW**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id. A party seeking summary judgment always bears the initial responsibility of informing the

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<sup>1</sup> Plaintiff and Third-Party Defendants filed their motions for summary judgment jointly with a single brief in support. (Doc. No. 27.)

district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

## **II. DISCUSSION**

The record before the Court for the purposes of deciding summary judgment ("Rule 56 record") consists of the transcripts of the administrative hearings and the exhibits attached thereto, and the exhibits attached to Plaintiff's/Third Party Defendants' (collectively the "District") Brief in Support of their Motion for Summary Judgment. The exhibits attached to the District's Brief include, inter alia, the deposition testimony of Mrs. Stephanie B., Scott's mother, a response to a request for a

production of documents, and responses to expert interrogatories by Defendants/Third Party Plaintiffs (collectively the "Parents"). The Parents have submitted no additional evidence in their responses.

A. Summary Judgment on the Parents' Counterclaims

Counterclaim I: IDEA & Counterclaim IV: 42 U.S.C.A. § 1983

In its opinion dated February 19, 1999, this Court held that the District had violated the IDEA, and it awarded Scott B. compensatory education based on the administrative record. Having found liability on behalf of the District, the Court will deny the District's Motion with respect to the Parents' Counterclaim I under the IDEA, and with respect to Counterclaim IV, which was brought pursuant to 42 U.S.C.A. § 1983 for compensatory and punitive damages to remedy the IDEA violations.

With regard to the Parents' claims for compensatory damages in addition to this Court's award of compensatory education, the Court finds that further compensatory damages are not warranted. There is no cognizable claim for compensatory damages under Scott's IDEA and § 1983 claims for non-pecuniary harm such as the alleged emotional distress of Scott's parents. Furthermore, there is no evidence in the record to support a claim for money damages; the parents have demonstrated no pecuniary loss.

With regard to punitive damages, it is well established that

punitive damages are unavailable under § 1983 against a municipality or against local officials in their official capacity. See, City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981); Agresta v. Goode, 797 F. Supp. 399 (E.D. Pa. 1992).

Therefore, the only outstanding issue with regard to these claims is the question of attorney's fees and costs, which will be resolved by a fee petition and hearing.

Counterclaim II: § 504 of the Rehabilitation Act of 1973

It is unnecessary to engage in an in depth analysis of § 504, as the Court finds that on their face, the majority of the Parents' allegations contained in Counterclaim II are nothing more than restatements of the alleged IDEA violations for which Scott has been compensated; the claims presented in Counterclaim II are therefore subsumed by Counterclaim I. Furthermore, there is no evidence in the Rule 56 record to support the Parents' contentions with regard to any of those claims which are arguably outside the scope of the IDEA claim. For example, the record is without evidence that the District failed to provide Scott with "transportation with a driver knowledgeable of appropriate emergency evacuation procedures." (Defs.' Ans. at ¶ 33.) Because the District met its initial Celotex burden by establishing a deficiency in the Parents' evidence necessary to

support their case, the burden was then on the Parents as the non-moving party to present some evidence which would allow their claim to go forward. See, Celotex, 477 U.S. at 325. In the absence of any additional evidence to support the Parents' § 504 allegations, summary judgment is appropriate against them and will be granted in favor of the District as to Counterclaim II.

Counterclaim III: Americans with Disabilities Act ("ADA")

For similar reasons, summary judgment will be granted with regard to Counterclaim III. As discussed, supra, the Parents have submitted no additional evidence in their opposition papers to fortify the Rule 56 record. The record as comprised is void of any evidence to support the Parents' claim under the ADA. Again, the burden was on the Parents as the non-moving party to present some evidence which would allow their claim to go forward, because the District met its initial burden by pointing to the absence of such evidence. See, Celotex, 477 U.S. at 325. Without any additional evidence to support the Parents' ADA claims, summary judgment is appropriate and will be granted against them and in favor of the District.

B. Summary Judgment on Third-Party Complaint

The Court notes initially that summary judgment is appropriate on all the Parents' claims in their Third-Party

Complaint against the school officials in their official capacities because claims against the individuals in their official capacity "are equivalent to claims against the government entity itself." W.B. v. Matula, 63 F.3d 484 (3d Cir. 1985). The Court has already found liability on the part of the District and therefore no additional claims remain against the individual Defendants in their official capacities.

(i) Qualified Immunity

Third-Party Defendants argue that they are protected by qualified immunity, which protects school officials in their individual capacities for violations of IDEA. Matula, 67 F.3d at 499. In Matula, the United States Court of Appeals for the Third Circuit ("Third Circuit") explained that:

Before determining whether defendants enjoy qualified immunity in their individual capacities, we must determine whether plaintiffs have alleged a constitutional or statutory violation. If so, defendants will nevertheless not be liable if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

For a right to be clearly established, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. In contrast, if the law is not established clearly when an official acts, he is entitled to qualified immunity because he could not reasonably be expected to anticipate subsequent legal developments. On the other hand, the clearly established standard does not require precise factual correspondence between relevant precedents and the conduct at issue.

Id. (internal citations omitted).

The court continued that to defeat a qualified immunity defense in an IDEA action, "a plaintiff must show more than that he or she was denied a free, appropriate public education in a general sense; rather, a plaintiff must demonstrate 'that the particular actions taken by defendants were impermissible under the law established at that time.'" Id. at 499-500 (quoting P.C. v. Mc Laughlin, 913 F.2d 1033, 1040 (2d Cir. 1990)).

This Court finds that qualified immunity is appropriate here. The record does not support, and the Parents fail to show, that the rights which the school officials at bar were found to have violated were so clearly established that reasonable officials would have understood that they were violating such rights through the actions they were taking. Significant in that respect is that the Hearing Examiner in this case found no IDEA violations on the part of the District after an extensive administrative hearing. The school officials' defense of qualified immunity is upheld and summary judgment will be granted in favor of them in their individual capacities.

(ii) Section 1985 Action

In Matula, the Third Circuit analyzed the viability of a claim of a § 1985 conspiracy to deny civil rights in the context of IDEA and § 504 violations.

The Supreme Court has held that § 1985(3) protects persons only from those conspiracies motivated by "some racial, or

perhaps otherwise class-based, invidiously discriminatory animus."

Id. at 503 (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). Declining to rule on whether or not disabled persons are members of a protected class under § 1985(3), the Third Circuit dismissed the plaintiffs' claims under § 1985 because there was no evidence in the record that the alleged deprivation of the child's IDEA and § 504 rights were based on racial or "otherwise class-based" animus.

Accordingly, because there is no evidence in the record that the individual Third-Party Defendants' acts depriving Scott B. of IDEA rights were based on racial or "otherwise class-based" animus, summary judgment will be granted in favor of the Third-Party Defendants as to the § 1985 claims.

An appropriate order follows.



the implementation of this Court's compensatory education award and the attorney's fee petition.

BY THE COURT:

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John R. Padova, J.