

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J., et al. : CIVIL ACTION
 :
v. : NO. 06-3866
 :
THE SCHOOL DISTRICT OF :
PHILADELPHIA, et al. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

April 25, 2007

Damian J., a 12-year-old learning disabled child, asks this Court to find conditions in his special education classroom, run by a private entity, are so chaotic he is not receiving a free appropriate public education as federal law mandates. Community Council argues as a private entity, it cannot be held liable under federal funding laws. Because I agree, I will grant Community Council's Motion to Dismiss as to all claims.

FACTS¹

Damian J. is the learning and emotionally disabled son of Dawn J. At the beginning of the 2005-06 school year, the School District of Philadelphia developed an Individualized Education Program ("IEP") for Damian J. which recommended full-time learning and emotional support classes. The IEP contained goals for reading fluency, reading comprehension, solving number problems, and increasing pro-social behavior by decreasing inappropriate behaviors. Dawn J. accepted the IEP. The recommended program was implemented at Longstreth Elementary School

¹The Court is required to accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. *Angelasto v. Prudential-Bache Sec., Inc.*, 764 F.2d 939, 944 (3d Cir. 1985).

in an Emotional Support class operated and staffed by Community Council for Mental Health and Mental Retardation under contract with the School District of Philadelphia.

Plaintiffs allege numerous deficiencies in the Community Council classroom, effectively denying Damian J. his right to a Free Appropriate Public Education (“FAPE”) and preventing the implementation of his IEP. According to the complaint, the classroom was chaotic and violent. Community Council staff inappropriately managed Damian J.’s behavior and at times improperly restrained him. Classroom staff members were often uncertified. As a result, Damian J. endured a dangerous environment, his behavior deteriorated, and he was unable to progress in his studies.

Damian J. and his mother requested a special education due process hearing, which was held in four sessions beginning on March 3, 2006, involving only Damian J., his mother, and the School District, but not Community Council. On June 1, 2006, a Pennsylvania Special Education Hearing Officer concluded the District did not deny Damian J. a free appropriate public education and refused to award Damian J. compensatory education for that time period. A Pennsylvania Special Education Appeals Panel upheld the Hearing Officer’s decision on July 13, 2006.

Damian J. and his mother allege the decisions violate the Individuals with Disabilities Education Act² (“the IDEA”), Section 504 of the Rehabilitation Act of 1973,³ and Section 1983 of the Civil Rights Act of 1871.⁴ They ask for compensatory education, monetary damages, and reasonable attorney’s fees. On December 15, 2006, Defendant Community Council moved to dismiss all of Damian J.’s claims against it.

²42 U.S.C. § 1401 *et seq.*

³29 U.S.C. § 794.

⁴42 U.S.C. § 1983.

DISCUSSION

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may only consider the facts alleged in the complaint and its attachments. *Jordan v. Fox, Rothschild, O'Brien, & Frankel*, 20 F.3d 1251, 1261 (3d Cir. 1994). A Rule 12(b)(6) motion will only be granted when it is certain no relief could be granted under any set of facts the plaintiff could prove. *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988).

Community Council asserts purely private entities like itself are not subject to liability under the IDEA in Pennsylvania because the statute provides only for liability of state and local educational agencies. This Court must determine whether a private entity can be held liable under the IDEA, an issue the Third Circuit has yet to rule on. Finding the local educational agency is the appropriate target of a suit under the IDEA, I conclude the legislature did not intend to hold private entities such as Community Council liable under the statute.

The IDEA authorizes federal funding to help states provide for the educational needs of disabled children. 20 U.S.C. § 1411 (2005). Federal funding under the IDEA is “contingent on state compliance with its array of substantive and procedural requirements.” *Beth V. v. Carroll*, 87 F.3d 80, 82 (3d Cir. 1996) (citing 20 U.S.C. § 1412). Every state or local educational agency which accepts funding under the IDEA is required to provide disabled children with a “free appropriate public education.” *Lawrence Tp. Bd. of Educ. v. New Jersey*, 417 F.3d 368, 370 (3d Cir. 2005) (citing 20 U.S.C. § 1412(a)(1)).

Under the IDEA, the state agency is responsible for the general supervision of educational programs implementing the statute and ensuring the substantive requirements of the statute are met. 20 U.S.C. § 1412(a)(11) (2005). The IDEA defines a “state educational agency” as “the State board

of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or . . . an officer or agency designated by the Governor or by State law.” 20 U.S.C. §1401(32) (2005). The IDEA defines a “local educational agency” as “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city” 20 U.S.C. §1401(19). The Pennsylvania Regulations⁵ implementing the IDEA adopt the federal definition of “local educational agency.” 22 Pa. Code §14.102(a)(2)(iii) (2001). On its face, the IDEA does not expressly provide for or prohibit the liability of private entities, like Community Council, who contract with public agencies to provide special education.

When a local school district in Pennsylvania cannot provide an appropriate educational program for its disabled students, it may use the services of an intermediate unit. 24 P.S. § 1372(4) (2000). An intermediate unit is “a regional educational service agency established under sections 951 - 974 of the School Code (24 P.S. §§ 9-951 - 9-974), which provides educational services to participating school districts as part of the public school system of the Commonwealth.” 22 Pa. Code § 4.3 (2006). Intermediate units are charged with the duty to “provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for.” 24 P.S. § 1372(4). Some District Courts have found intermediate units may be held liable under the IDEA for the failure to provide a FAPE. *See, e.g., Colon v. Colonial Intermediate Unit*, 443 F. Supp. 2d 659, 667 (M.D.

⁵The IDEA requires any state or local agency receiving funds to maintain regulations regarding the use of that money. 20 U.S.C. §1415(a) (2005).

Pa. 2006); *M.K. v. Ephrata Area School*, 2004 WL 1052999 (E.D. Pa. May 5, 2004) (order granting in part and denying in part Defendant’s Motion to Dismiss). Private entities contracting with public school districts, such as Community Council, do not fit the legal definition of an intermediate unit. Unlike an intermediate unit, Community Council is not directly funded or controlled by the Commonwealth, and Pennsylvania law does not impose any duty on it to provide for special needs children.

The Second Circuit and the Sixth Circuit have both held the IDEA does not impose liability on private schools providing educational services to disabled students. *St. Johnsberry Academy v. D.H.*, 240 F.3d 163 (2d Cir. 2001); *Ullmo v. Gilmour Academy*, 273 F.3d 671 (6th Cir. 2001). In *St. Johnsberry Academy v. D.H.*, a disabled individual attending a private school sued the school for refusing to enroll him in mainstream classes based on a requirement students in such classes read at a fifth grade level. The student argued St. Johnsberry Academy denied him the right to an education in the “least restrictive environment” in compliance with the IDEA. *St. Johnsberry Academy*, 240 F.3d at 167 (citing 20 U.S.C. § 1415(a)(5)). The Court held the Academy’s refusal to permit D.H. to attend mainstream classes could not violate the IDEA, because a private school is not liable under the statute. Private schools are not local educational agencies, defined as public administrative bodies by the IDEA, and do not fit into the definition of any other entity that may be held liable under the Act.

The Court reasoned the state remains responsible under the IDEA for students it places in private schools, stating:

IDEA expressly contemplates that children will be “placed in [private] schools or facilities by the State or appropriate local educational agency as the means of” complying with the statute, and with respect to such children, the statute obligates the “State” – not the private school – to “ensure” that such children “are provided special

education and related services, in accordance with an individualized education program.” 20 U.S.C. § 1412(a), (a)(10)(B)(i) .

St. Johnsbury Academy, 240 F.3d at 171. The Court found further support for the conclusion the IDEA applies only to State and public agencies, not to private schools, in the IDEA’s implementing regulations. Under the regulations the state agency, and not the private school, is obligated to ensure children placed in private schools by a public agency are “provided special education and related services in conformance with an [individualized education plan].” *Id.* (quoting 34 C.F.R. §§ 300.401 (1990) (accord 34 C.F.R. §§ 300.146 (2006))).

Holding a private school did not fit the definition of a local educational agency potentially liable under the IDEA, the Sixth Circuit adopted the reasoning from *St. Johnsbury Academy*. *Ullmo v. Gilmour Academy*, 273 F.3d 671 (6th Cir. 2001). In *Ullmo* the parents of a student attending a private Catholic school sued the institution alleging it violated the IDEA by failing to accommodate their son’s learning disability. The parents argued the school inappropriately failed to adopt the recommendations of their son’s psychologist, resulting in the child’s poor grades. The Sixth Circuit held the private school was not subject to liability, because it did not receive funds provided under the IDEA for disability education and was therefore not a local education agency.

Community Council is not a private school, but is similar to the defendant institutions examined in *St. Johnsbury* and *Ullmo*. Community Council, as a private entity contracted by the Philadelphia School District, fits neither the IDEA’s definition of a local educational agency nor Pennsylvania’s definition of an intermediate unit. It does not fit into the definition of any other entity that may be held liable under the IDEA. *See* 20 U.S.C. § 1401, 24 P.S. § 1372(4). Federal regulations require state agencies monitor disabled children placed in private schools to insure the IDEA is properly implemented in the private schools, suggesting IDEA liability remains with the

public agency placing the child and not the private entity implementing the IEP. *See* 34 C.F.R. 300.145-147 (2006). Persuaded by the circuits that have considered this issue, I hold the IDEA does not impose liability upon private entities.⁶

Community Council additionally claims it is not subject to liability under Section 504, because it does not receive federal funds within the meaning of the statute. IDEA and Section 504 claims are similar causes of actions. The IDEA imposes an affirmative duty on states which accept certain federal funds to provide a FAPE for all their disabled children; Section 504 of the Rehabilitation Act is a negative prohibition against disability discrimination in federally-funded programs. 29 U.S.C. § 794(a) (2002). As the Third Circuit explained:

[t]here appear to be few differences, if any, between IDEA’s affirmative duty and § 504’s negative prohibition. Indeed, the regulations implementing § 504 adopt the IDEA language, requiring that schools which receive or benefit from federal financial assistance “shall provide a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction.” 34 C.F.R. § 104.33(a).

W.B. v. Matula, 67 F.3d 484, 492-493 (3d Cir. 1995).

To establish a violation of Section 504, Damian J. must demonstrate: (1) he is disabled as defined by the Act; (2) he is “otherwise qualified” to participate in school activities, (3) the school or the Board receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *Matula*, 67 F.3d at 492. Community Council argues Damian J.’s pleadings are insufficient to establish a violation of Section 504 because only the School District receives federal funds and not Community Council.

⁶ Unlike Pennsylvania, some states have elected to statutorily impose IDEA liability upon private entities contracting with state or local agencies to provide services to disabled students. *See* N.J.A.C. 6A:14-1.1(c) (2006); *P.N. v. Greco*, 282 F. Supp. 2d 221, 238 (D.N.J. 2003) (holding a private entity liable under the New Jersey statute). While Pennsylvania law does not impose IDEA liability on private entities, the legislature is free to alter the regulations implementing the IDEA to do so.

Community Council may only be liable under Section 504 of the Rehabilitation Act if it receives federal financial assistance. *Matula*, 67 F.3d at 492 (citing 34 C.F.R. §104.4(a)). Plaintiffs have not alleged Community Council directly receives federal funding, stating only that it “contracts with the School District of Philadelphia,” which is a recipient of federal funds. Compl. at 3. The Supreme Court has held an entity may receive federal financial assistance indirectly and still be considered a recipient within the meaning of the Rehabilitation Act if the grantmaker intends the entity to receive the funding. *Grove City College v. Bell*, 465 U.S. 555, 56-70 (1984). Liability under the Rehabilitation Act is specifically limited to those who receive aid and does not cover those who merely have a beneficial relationship with the entities receiving such assistance. *Dept. of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597, 605 (1986). In *Paralyzed Veterans*, the Court reasoned commercial airlines, although beneficiaries of the funding received by airport operators, were not recipients of the assistance because they were not “in a position to accept or reject their obligations as a part of the decision whether or not to ‘receive’ federal funds.” *Id.*

In the Third Circuit, when determining whether an entity is an indirect recipient of federal financial assistance, courts should not only consider the intent of the grantmaker, but also “the degree to which the entity is able to control decisions made with respect to the money, the most important decision being whether the grant money should be accepted at all.” *Smith v. NCAA*, 266 F.3d 152, 161 (3d Cir. 2001).⁷ Damian J. has pleaded no facts suggesting Community Council has a relationship with the School District enabling it to control the decisions made with respect to the

⁷Although *Smith v. NCAA* involved a Title IX claim, the analysis for whether the defendant is a recipient of federal funds is the same in a Section 504 claim. *Smith*, 266 F.3d at 157. (“§ 504 of the Rehabilitation Act of 1973 . . . prohibits discrimination based on disability in substantially the same terms that Title IX uses to prohibit sex discrimination . . .”).

District's federal funding. Absent this allegation, Community Council can not be held liable under Section 504.

Having ruled both substantive claims against Community Council fail, I find Damian J.'s Section 1983 claim can not survive. Because Section 1983 is not a source of substantive rights, *Berg v. County of Allegheny*, 219 F.3d 261, 268 (3d Cir. 1999), Damian J.'s 1983 claim against Community Council must be dismissed.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J., et al.	:	CIVIL ACTION
	:	
v.	:	No. 06-3866
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA, et al.	:	

ORDER

AND NOW, this 25th day of April, 2007, it is hereby ORDERED Community Council for Mental Health and Mental Retardation's Motion to Dismiss(Document 10) is GRANTED.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.