California Supreme Court Affirms Public School Districts Cannot be Sued Under Unruh Civil Rights Act for Disability Discrimination

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The California Supreme Court recently upheld a lower court ruling that a public school district is not a "business establishment" and therefore cannot be liable for disability discrimination under California's Unruh Civil Rights Act (Unruh Act or Act). (*Brennon B. v. Superior Court of Contra Costa County* (Aug. 4, 2022, S266254) __ Cal.App.5th __.) The Court concluded that the Unruh Act, *as currently written*, cannot reasonably be interpreted to encompass public school districts providing a free education to students.

In its ruling, the Court specifically addressed whether Brennon (and other plaintiffs) are entitled to pursue remedies against public school districts under the Unruh Act. It determined they are not. However, the Court acknowledged that Brennon and other plaintiffs who prove discrimination are entitled to relief under various other state and federal antidiscrimination laws.

Supreme Court's Decision

The Court considered two issues of statewide importance: (1) whether a public school district is a "business establishment" for purposes of the Unruh Act (or, if not, whether Unruh Act remedies are still available because they have been incorporated into the relevant provisions of the Education Code); and (2) even if a school district is not a business establishment, whether it can nevertheless be sued under the Unruh Act where the alleged discriminatory conduct is actionable under the Americans with Disabilities Act (ADA).

We previously wrote about the Court of Appeal decision reviewed by the California Supreme Court and ultimately affirmed, in our 2020 Client News Brief No. 83.

The Court analyzed the purpose and legislative history of the Unruh Act. While the first version of the bill that would become the Unruh Act mentioned schools as one of the numerous entities covered, a series of amendments resulted in elimination of the term "schools." The final version of the bill simply referred to "all business establishments of every kind whatsoever." Despite the apparent breadth of this phrase, the Court rejected Brennon's contention that the Legislature intended the Act to cover public schools. Rather, in context, the Court observed that the Legislature did not intend school districts, which are not normally understood as "business establishments," to fall within the ambit of the legislation, as school districts, when acting in their core

educational capacity, do not perform the functions typically ascribed to business establishments.

As to the second question, the Court rejected the contention that any violation of the ADA by any entity, whether public or private, is *per se* a violation of the Unruh Act, instead ruling that the Act's reach is limited to business establishments and that only violations of the ADA *by a business establishment* are also violations of the Unruh Act. Thus, school districts are not liable under this theory, either.

The Court also briefly addressed the "exceedingly compelling, yet competing, policy concerns implicated by this case," even though it could not base its ruling on such arguments. Brennon argued that including school districts as business establishments would better vindicate students' rights and promote the State's policy against discrimination. Private enforcement actions would ostensibly be more feasible under the Act, because the remedies under the Act are more significant than other antidiscrimination statutes, providing for recovery of both damages and attorneys' fees. The prospect of facing costly litigation and liability under the Unruh Act may well encourage school districts to institute systemic changes and proactively address discrimination. For its part, the District maintained that exposing school districts to significant financial liability may, in turn, impede its ability to provide free education and that public entities are still subject to other antidiscrimination laws that hold them accountable.

Takeaways

This case confirms that public school districts are not subject to liability under the Unruh Act. Despite this favorable outcome for school districts, it is worth noting that, in some respects, the Court's opinion reads as a shot across the bow. The facts of the *Brennon B.* case are extremely sad and disturbing. Perhaps for this reason, the Court stresses its role is one of objective, statutory interpretation, not of subjective, policy-driven analysis concerning protections for those who suffer discrimination. The Court is careful to point out that the Act does not apply to school districts "*as currently written*" (emphasis in original), and the proper balancing of these competing priorities is distinctly the province of the Legislature.

For more information about the *Brennon B.* opinion, or disability discrimination liability generally, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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