Public School Districts Cannot be Sued Under California's Unruh Civil Rights Act for Disability Discrimination

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In a case of first impression, the California Court of Appeal for the First Appellate District, recently held that a school district is not a "business establishment" and therefore cannot be liable for disability discrimination under California's Unruh Civil Rights Act, Civil Code section 51 (Unruh Act). (*Brennon B. v. Superior Court of Contra Costa County* (Nov. 13, 2020, A157026) _ Cal.App.5th _.) The court in *Brennon B.* concluded the Unruh Act imposes liability only on *business establishments*, which does not include public school districts.

However, the *Brennon B.* court made clear that school districts continue to be subject to stringent state and federal antidiscrimination laws, including those set forth in the Education Code, Government Code, federal constitutional and statutory mandates, including claims actionable under 42 United States Code, section 1983, Title IX of the Education Amendments of 1972, Title II of the Americans with Disabilities Act (ADA), and section 504 of the Rehabilitation Act of 1973.

Court of Appeal's Decision

The two issues before the court were: (1) whether a public school district is a "business establishment" for purposes of the Unruh Act; and (2) even if not, whether a public school district can nevertheless be sued under the Unruh Act where the alleged discriminatory conduct is a violation of the ADA. The court of appeal answered no to both questions, concluding the Unruh Act imposes liability only on business establishments, which does not include public school districts.

Where neither the California Supreme Court nor any other California Court of Appeal had previously addressed these questions, the *Brennan B.* court issued a 60-page opinion, which contained a comprehensive analysis of the historical context of the Unruh Act, its legislative history, and state and federal case law, all reviewed for purposes of deciding whether an entity is a "business establishment" under the Unruh Act.

Historically, the court noted, the Unruh Act was enacted in California to secure prohibitions against discrimination by privately owned programs and services, not to reach "state action." Moreover, nothing in the legislative history of the Unruh Act

suggested it was intended to reach discriminatory conduct by state agents, such as public school districts. The court of appeal noted that although prior versions of the Unruh Act referred to "schools," subsequent amendments progressively narrowed its application, and the final version removed any reference to schools entirely.

The court of appeal also canvassed California Supreme Court decisions examining the meaning of "business establishment" under the Unruh Act. While the state's high court had never considered whether a public entity was a business establishment for purposes of the Unruh Act, its prior decisions consistently noted the state's public accommodation laws and resulting Unruh Act have always been, and remain, directed at private rather than state conduct. In previous cases, the California Supreme Court determined private entities were business establishments, including a nonprofit condominium association, a local Boy's Club, and a members-only country club, but a Boy Scouts troop was not. The *Brennon B.* court noted that in those cases, many of the reasons for the Supreme Court determining that private entities were business establishments did not pertain to public school districts, including functions such as enhancing the entity's economic value, conducting commercial transactions, or selling the right to participate in the programs and services they deliver.

Further, prior California appellate decisions have consistently found that government entities were not business establishments under the Unruh Act. Consistent with the reasoning in those cases, the *Brennon B.* court concluded "public school districts can well be described, in acting as the state's agent in delivering constitutionally mandated, free primary and secondary education to the state's school age children, as a 'public servant, not [as] a commercial enterprise.'"

Federal court decisions are split on the question. The *Brennon B.* court reviewed those decisions, and disagreed with the line of cases finding a public school district is a business establishment under the Unruh Act. According to the court, those decisions largely ignored prior California Supreme Court reasoning and historical and legislative history of the Unruh Act.

Finally, the court of appeal rejected plaintiff's alternative argument that even if a public school district is not a business establishment under the Unruh Act, it nevertheless can be sued under it based on language in the Unruh Act that a violation of the ADA is a *per se* violation of the Unruh Act. The court of appeal again examined the historical and legislative history, and concluded that only violations of the ADA *by a business establishment* are also violations of the Unruh Act.

Takeaways

This case makes clear that public school districts are not subject to liability under the Unruh Act, including the potential larger monetary and statutory damages and attorneys' fees available under that law. However, the case also makes clear that school districts continue to be subject to rigorous state and federal antidiscrimination laws, which also allow for monetary damages, injunctive relief, and attorneys' fees.

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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.