

**U.S. SUPREME COURT ISSUES LONG-AWAITED DECISION IN
A.J.T. v. OSSEO AREA SCHOOLS CASE ON THE STANDARD
FOR “INTENTIONAL DISCRIMINATION” UNDER
SECTION 504 AND TITLE II OF THE ADA**

For federal claims brought under Section 504 of the *Rehabilitation Act of 1973* and the Title II of the *Americans with Disabilities Act* (“ADA”), a student with a disability must establish that a federally funded program or public entity (*e.g.*, a school district, special education cooperative, or college/ university) has engaged in intentional discrimination on the basis of their disability. Today the U.S. Supreme Court issued a unanimous decision in *A.J.T. v. Osseo Area Schools*, addressing the standard for proving what constitutes “intentional discrimination” and seeking monetary damages as a remedy.

At the time of the decision, most U.S. Courts of Appeals, including the 7th Circuit (Illinois’ jurisdiction for appeals in federal court cases), applied a “deliberate indifference” standard for proving intentional discrimination. At issue in *A.J.T. v. Osseo* was the application by the U.S. Court of Appeals for the 8th Circuit of a more stringent “bad faith or gross misjudgment” standard.

The student in the case was a teenager who suffered frequent seizures each morning and was unable to attend school before noon. Her school district denied the parents’ repeated requests to include evening instruction in the student’s IEP, resulting in the student receiving fewer hours of instruction than her nondisabled peers. In a due process hearing before the Minnesota Department of Education, the administrative law judge determined that the school district had failed to provide the student with a free appropriate public education in violation of the *Individuals with Disabilities Education Act* (“IDEA”). The parents then sued in federal court under Section 504 and the ADA, seeking compensatory damages for discrimination by the school district on the basis of the student’s disability. The U.S. District Court ruled in favor of the school district, and the U.S. Court of Appeals for the 8th Circuit affirmed, on the grounds that the school district’s failure to provide a reasonable accommodation was not enough to state a claim of intentional discrimination under Section 504 and the ADA because the district’s conduct did not rise to the level of “bad faith or gross misjudgment,” a higher and more stringent standard than the “deliberate indifference [to a student’s federally protected rights]” standard applied in many other U.S. Courts of Appeal.

On appeal by the parents, the U.S. Supreme Court rejected the school district's argument that this higher standard should apply for plaintiffs to prove disability-based discrimination and obtain compensatory damages under the Section 504 and the *ADA*. The Supreme Court decision brings consistency to how future federal court cases about disability discrimination based on a school district's failure to provide appropriate educational services will be analyzed. Because the decision adopts the standard already followed by the federal courts in our jurisdiction, the Supreme Court's ruling does not change the level of misconduct that a parent must show a school district or other public entity to have engaged in to establish a violation of a student's rights under Section 504 and the *ADA* and thereby obtain monetary damages. Parents still must prove that a public school's violation of Title II of the *ADA* or Section 504 was done with "deliberate indifference" towards the rights afforded to students by those laws.

Please contact any of our attorneys in the ECB&S special education practice group (Teri Engler, Cindy Baasten, Dawn Hinkle, Luis Rodriguez, Kristen Charkow, Aimee LeBlanc, and Lauren Lowe) at 630.313.4750 with any questions you may have regarding this decision or its implications.