Quick Turn Around

Project FORUM

QTA – A brief analysis of a critical issue in special education

The Eleventh Amendment to the U.S. Constitution

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Overview

This Quick Turn-Around (QTA) document provides a brief description of the Eleventh Amendment to the U.S. Constitution and its importance to state education agencies (SEAs). Major pertinent decisions are synthesized to clarify the Amendment's impact on the liability of SEAs in student suits under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (§504), and the Americans with Disabilities Act (ADA). A table summarizing the current status of Eleventh Amendment application to each state under these three laws follows the legal overview. Key court cases relevant to each state are listed at the end of the document.

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The Eleventh Amendment

The Eleventh Amendment to the U.S. Constitution reads as follows:

> *The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any Foreign State.*

This Amendment appears to say, in relevant part, that the residents of one state, for example, New Jersey, may not sue the government of another state, for example, Pennsylvania. More often, this Amendment is interpreted to mean that residents of one state may not sue the government of that same state.

More specifically, in a lengthening line of cases, the Supreme Court has clarified the meaning of the Amendment's rather confusing language. For example, the Court has explained that the Eleventh Amendment makes states immune to suits for money damages in federal court whether brought by residents of that state or by those of some other state. Similarly, the Court has made clear that this immunity does not apply to court orders, called "injunctions," against future

actions. An example of this second judicial interpretation would be that an SEA is not immune from a court order to participate in desegregation of illegally segregated schools.

The Supreme Court has also established other exceptions, or conditions under which the Eleventh Amendment's immunity protection does not apply. The lower courts, in turn, have applied these Supreme Court standards, as they must, to suits against state agencies under the IDEA, §504, or the ADA, with differing results. For example, when students sue SEAs under the ADA, in some jurisdictions the Eleventh Amendment protects the SEA against liability, while in other states it does not.

The Exceptions

In recent years, the Supreme Court has set forth specific conditions for negating a state's Eleventh Amendment immunity against money damages in federal courts under some federal statutes. The first two conditions apply to Congress, the source of the legislation. First, Congress can express its intent to nullify, or "abrogate," Eleventh Amendment immunity for states under a specific federal statute, making it possible for states to be sued. However, Congress may do so only by making its intention unmistakably clear in the language of the legislation, as determined by the courts. Second, the courts must be persuaded that Congress has sufficient authority in the Constitution to nullify Eleventh Amendment immunity. The alternative condition applies to the states, which are the recipients of the immunity. Specifically, the state may waive, or knowingly and voluntarily give up, the immunity. For example, the state's acceptance of federal funds may constitute such a waiver, depending on whether this acceptance is ultimately determined by a court to be informed consent or coercion.

The Issue

All three federal statutes upon which students, through their parents, have sued SEAs—the IDEA, §504, and the ADA—now meet the first condition for nullifying the state's constitutional immunity because each contains unmistakably clear language of Congressional intent to nullify the state's immunity. For example, the language of IDEA is quite clear:

> ***SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.***
>
> *(a) IN GENERAL- A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.*
>
> *(b) REMEDIES- In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.*
>
> *(c) EFFECTIVE DATE- Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990* [20 U.S.C. Chap. 33 §1403, as amended by P.L. 105-17].

The remaining issue is whether these expressions of Congressional intent meet the other, alternative conditions for being effective.

In its most recent pronouncement to date—*Board of Trustees v. Garrett* (2001)—the U.S. Supreme Court concluded that Congress' intent to nullify Eleventh Amendment immunity in the *ADA's Title I*, which concerns employment, did not meet the requisite condition of having sufficient underlying constitutional authority. Thus, states retain their Eleventh Amendment immunity against employees' suits for money damages in federal court under Title I of the ADA.

However, the Supreme Court has not yet faced the issue of whether the language in the *ADA's Title II*, which is the basis for most student suits against SEAs under the ADA, or whether the corresponding language of the IDEA and §504 meet the conditions for being an exception to Eleventh Amendment immunity. The lower courts have addressed this issue, with varying and conflicting results that have direct significance for the SEAs.

An Example

Where the state has immunity under the Eleventh Amendment and cannot be sued, this Amendment provides a formidable barrier to the SEA's liability in special education litigation under these federal statutes, not only for compensatory or punitive damages, but also for tuition reimbursement. A recent class action suit in New York provides a clear example of the "injunction" limitation and the waiver exception, both which are discussed above. After settling with the school district for $735,000 in compensatory damages and specified other remedial relief, the plaintiffs continued to pursue their claims against the SEA, which was also a defendant in the case. In *A.A. v. Board of Education* (2003), the federal trial court held that the Eleventh Amendment immunity effectively barred both the §504 and the IDEA claims for money damages against the defendant SEA. Rejecting the waiver exception, the court concluded that upon accepting federal funds prior to the lawsuit, New York did not knowingly and intentionally relinquish its constitutional immunity. At the same time, however, the court ruled that the SEA's Eleventh Amendment immunity does not extend to possible future-oriented relief, including court orders for the SEA to pay attorneys' fees and provide the students with compensatory education services.

Local Education Agencies

Very few local school districts are considered extensions of state government for purposes of the Eleventh Amendment. Thus far, California and Maryland are the only clearly settled examples of states where school districts have the same Eleventh Amendment immunity as SEAs. In contrast, the courts in most jurisdictions, including Alabama, Kentucky, Nevada, New Jersey, Ohio and Wyoming, have ruled that the Eleventh Amendment does not extend to school districts.

Court Cases

As of the time of this writing, courts covering 18 states have clearly addressed the issue of Eleventh Amendment immunity with respect to the IDEA, ruling that for these 18 states the

answer is "No," there is not immunity. Thus, in accordance with the language of IDEA, SEAs are not likely to have Eleventh Amendment immunity against suits under the IDEA.

In partial contrast, court decisions involving §504 covering 44 states provide a majority, but not unanimous view, as to whether the Eleventh Amendment provides immunity. Specifically, the answers at this point related to §504 are as follows: "No" – 37 states were found not to have Eleventh Amendment immunity; and "Yes" – 4 states were found to have immunity. Decisions for three other states under §504 yielded a partial "Yes" – at least before 2001. Only two federal appellate courts—the Second Circuit and the Fifth Circuit—account for the minority view (i.e., the 4 "Yes" and 3 partial "Yes" states).

Finally, the pattern is reversed for Title II of the ADA, which covers student suits against SEAs. Specifically, courts covering 28 states have said "Yes" and confirmed that SEAs have immunity against suits, whereas courts in seven states have said "No," SEAs do not have immunity and are therefore subject to suit. Courts covering another nine states have provided indecisive or intermediate answers.

For each of the 50 states and the District of Columbia, the following table presents results of the pertinent court cases in that jurisdiction as to whether the Eleventh Amendment immunity applies (i.e., has not been abrogated or waived) under the IDEA, §504 and the ADA respectively. The state of the law in this area is still developing, particularly as a result of the Supreme Court's decision in *Garrett* (2001). The entries here represent key lower court decisions from 1990 to date in terms of the IDEA, §504, and the pertinent part of the ADA (Title II, which applies to student suits against SEAs).

Please note the following five points when using the table:

(1) The bracketed number at the right of each entry designates the applicable court decision(s), which are listed in numbered, alphabetical order in the list of case citations directly after the table.
(2) Those answers based on decisions of the federal appellate courts are in CAPITAL LETTERS to show their relatively strong authority in relation to federal trial courts, which are in lower case letters.
(3) The entries for those court decisions that are clearly qualified include said restriction, such as "at least before 2001."
(4) Those decisions that provided only a cursory analysis or which *Garrett* (2001) would appear to call into question are represented by a conditional entry – either "probably" or "probably not."
(5) Blank state cells for IDEA, §504 or ADA indicate that there has not been a court case covering that particular state.

For a more detailed treatment of this subject, including comprehensive legal citations, see Perry Zirkel, "Eleventh Amendment Immunity and Student Suits under the IDEA, Section 504 and the ADA," *West's Education Law Reporter* (in press).

Summary

At this point the prevailing pattern is that the Eleventh Amendment does not appear to apply to the IDEA, meaning that SEAs do not have immunity to student suits under the IDEA in the jurisdictions where courts have addressed this issue. Based on the court decisions covering 18 states, SEAs in the remaining jurisdictions are not at all likely to have this protection. The corresponding conclusion as to whether the Eleventh Amendment is effective against student suits under §504 is not quite as clear-cut. Specifically, 37 of 44 states were found not to have immunity; however, in a relatively small, but notable, minority of seven states, largely represented by two federal circuit court of appeals, do have immunity. Finally, the pattern is reversed in terms of the pertinent part of the ADA—in a clear majority of the jurisdictions to date (28 of 35 states), the Eleventh Amendment does provide immunity for SEAs.

This QTA is intended to provide a starting point from which to gain an understanding of the relevance of the Eleventh Amendment to SEAs. However, because this area of law is rapidly evolving, SEA staff members are advised to check with legal counsel to assess the currently applicable authority for their state's jurisdiction.

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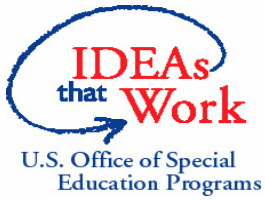

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Eleventh Amendment Immunity to Student Suits by Statute and State: Does it Apply?

STATE	IDEA	§504	ADA
AL		yes [13]	
AK			
AZ		NO [18]	NO [18]
AR	NO [6]	NO [15]	YES [3]
CA	probably not [9]	NO [18]	NO [18]
CO		NO [22]	NO [27]
CT		YES [12]	YES, UNLESS PROVEN DISCRIMINATORY INTENT OR ILL WILL [12]
DE	NO [2]	NO [2]	
DC		no [8]	
FL			
GA			
HI	probably not [10]	NO [18]	NO [18]
ID		NO [18]	NO [18]
IL	NO [4]	NO [26]	PROBABLY [28]
IN	NO [4]	NO [26]	PROBABLY [28]
IA	NO [6]	NO [15]	YES [3]
KS		NO [22]	YES [27]
KY		NO [14]	YES [23]
LA		YES, AT LEAST BEFORE 2001 [17]	YES [21]
ME			UNCLEAR [16]
MD	NO [11]	NO [25]	YES [29]
MA			UNCLEAR [16]
MI		NO [14]	YES [23]
MN	NO [6]	NO [15]	YES [3]
MS		YES, AT LEAST BEFORE 2001 [17]	YES [21]
MO	NO [6]	NO [15]	YES [3]
MT		NO [18]	NO [18]
NE	NO [6]	NO [15]	YES [3]
NV		NO [18]	NO [18]
NH			yes [16]
NJ	NO [2]	NO [2]	yes [7]
NM		NO [22]	YES [27]

STATE	IDEA	§504	ADA
NY		YES [12]	YES, UNLESS PROVEN DISCRIMINATORY INTENT OR ILL WILL [12]
NC	NO [11]	NO [25]	YES [29]
ND	NO [6]	NO [15]	YES [3]
OH		NO [14]	YES [23]
OK		NO [22]	YES [27]
OR	Probably not [24]	NO [18]	NO [18]
PA	NO [2]	NO [2]	yes [20]
RI			UNCLEAR [16]
SC	NO [11]	NO [25]	YES [29]
SD	NO [6]	NO [15]	YES [3]
TN		NO [14]	YES [23]
TX		YES, AT LEAST BEFORE 2001 [17]	YES [21]
UT		NO [22]	YES [27]
VT		YES [12]	YES, UNLESS PROVEN DISCRIMINATORY INTENT OR ILL WILL [12]
VA	NO [11]	NO [25]	YES [29]
WA		NO [18]	NO [18]
WV	NO [11]	NO [25]	YES [29]
WI	NO [4]	NO [26]	PROBABLY [28]
WY		NO [22]	YES [27]

List of Cases

1. A.A. v. Bd. of Educ., 196 F. Supp. 2d 259 (E.D.N.Y. 2003)
2. A.W. v. Jersey City Pub. Sch., 341 F.3d 234 (3d Cir. 2003)
3. Alsbrook v. City of Maumelle, 184 F.3d 999 (8th Cir. 1999), *cert denied sub nom. Alsbrook v. Arkansas*, 529 U.S. 1001 (2000)
4. Bd. of Educ. v. Kelly E., 207 F.3d 931 (7th Cir. 2000)
5. Bd. of Trustees v. Garrett, 531 U.S. 56 (2001)
6. Bradley v. Arkansas Dep't of Educ., 189 F.3d 745 (8th Cir. 1999), *rev'd on other grounds sub nom* Jim C. v. United States, 235 F.3d 1079 (8th Cir. 2000), *cert. denied*, 533 U.S. 949 (2001)
7. Doe v. Div. of Youth & Family Serv., 148 F. Supp. 2d 462 (D.N.J. 2001)
8. Duncan v. Washington Metro. Area Transit Auth., 214 F.R.D. 43 (D.D.C. 2003)
9. Emma C. v. Eastin, 985 F. Supp. 2d 940 (N.D. Cal. 1997)
10. Felix v. Waihee, 21 IDELR 48 (D. Hawaii 1994)
11. Gadsby v. Grasmick, 109 F.3d 940 (4th Cir. 1997)
12. Garcia v. SUNY Health Sci. Ctr. of Brooklyn, 280 F.3d 98 (2d Cir. 2001)
13. Garrett v. Univ. of Alabama at Birmingham Bd. of Trustees, 223 F. Supp. 2d 1244 (S.D. Ala. 2002)
14. Gean v. Hattaway, 330 F.3d 758 (6th Cir. 2003)
15. Jim C. v. United States, 235 F.3d 1079 (8th Cir. 2000), *cert. denied*, 533 U.S. 949 (2001)
16. Kiman v. New Hampshire Dep't of Corr., 332 F.3d 29 (1st Cir. 2003)
17. Miller v. Texas Tech. Univ. Health Sci. Ctr., 330 F.3d 691 (5th Cir. 2003)
18. Miranda v. Kitzhaber, 328 F.3d 1181 (9th Cir. 2003)
19. Neiberger v. Hawkins, 208 F.R.D. 301 (D. Colo. 2003)
20. O.F. v. Chester Upland Sch. Dist., 246 F. Supp. 2d 409 (E.D. Pa. 2002)
21. Reickenbacker v. Foster, 274 F.3d 974 (5th Cir. 2001)
22. Robinson v. Kansas, 295 F.3d 1183 (10th Cir. 2002)
23. Robinson v. Univ. of Akron Sch. of Law, 307 F.3d 409 (6th Cir. 2002)
24. S.V. v. Sherwood Sch. Dist., 31 IDELR ¶ 235 (D. Or. 1999), *rev'd on other grounds*, 254 F.3d 877 (9th Cir. 2003)
25. Shepard v. Irving, 2003 U.S. App. LEXIS 17049 (4th Cir. 2003)
26. Stanley v. Litscher, 213 F.3d 340 (7th Cir. 2000)
27. Thompson v. State of Colorado, 278 F.3d 1020 (10th Cir. 2001), *cert. denied*, 535 U.S. 1077 (2002)
28. Walker v. Snyder, 213 F.3d 344 (7th Cir. 2000), *cert. denied*, 531 U.S. 1190 (2001)
29. Wessel v. Glendening, 306 F.3d 203 (4th Cir. 2002)