

# CALIFORNIA

SAN JOSE OFFICE

## PREVAILS ON MOTION FOR SUMMARY JUDGMENT ON CLAIM ALLEGING AUTISM CENTER'S BEHAVIORAL PLANS CAUSED SELF-INJURIOUS BEHAVIORS



**A**n autistic child, by and through his Guardian Ad Litem parents, Gia and George McElroy, filed a lawsuit in 2014 alleging that he engaged in increased disruptive and self-injurious behaviors as a result of inadequate behavioral plans and services provided by our clients, Pacific Autism Center for Education ("PACE"), PACE's Board of Directors, Officers, and several employees.

In the complaint, filed in Santa Clara County Superior Court, plaintiff alleged that the PACE Defendants failed to implement

appropriate plans to control his disruptive behavior as a student and resident over a twenty-two month period. Plaintiff sued under 42 U.S.C. Section 1983, Individuals with Disabilities Education Act, The Unruh Civil Rights Act, Section 504 of the Rehabilitation Act, as well as state law causes of action including assault and battery, false imprisonment, negligence, fraud, negligent infliction of emotional distress, and intentional infliction of emotional distress. The complaint sought compensation and statutory penalties for his emotional distress and damages in the millions of dollars, as well as attorney fees and costs.

After we removed the action to the United States District Court (NDCA), we filed our Motion for Summary Judgment which we supported by a declaration from Charles Scott, MD, an expert psychiatrist from UC Davis. The Scott declaration established



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to a reasonable medical probability that the increase in Plaintiff's disruptive behaviors was not caused by PACE's plans and services, but instead was caused by many factors including medication, sleep deprivation, transitions, and puberty. Dr. Scott also concluded the disruptive behaviors were plaintiff's way of getting attention and showing frustration.

In granting Summary Judgment to the PACE defendants on May 27, 2016, Judge Lucy Koh of the USDC accepted our argument that causation for the state law claims must be proven to a reasonable medical probability based on expert testimony. The court found the expert declarations proffered by plaintiff failed to refute Dr. Scott's opinions and failed to satisfy the burden of proof by failing to demonstrate the IEPs and IPPs created and implemented by our clients caused plaintiff's increased disruptive behaviors. The court also determined there was no showing of discrimination under the Unruh

Act, that California does not require that private schools comply with IDEA, that there was no evidence of any violation of Section 504 of the Rehabilitation Act, and that Plaintiff failed to satisfy any of the four state action tests required to bring a Section 1983 action.

The PACE defendants were represented by Assistant Managing Partner Sharon L Hightower and Senior Associate Nathaniel Lucey of Ericksen Arbuthnot's San Jose office. They were assisted by Michael Farbstein of Farbstein & Blackman (who represented the Board of Directors) and by Ronald J. Cook of Willoughby, Stuart, Bening & Cook (who served as Cumis counsel)

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