

## *Jordan Burriola v. Greater Toledo YMCA*

### Why This Case is Important

After four days of trial and one day of oral arguments, Judge Carr granted Ms. Burriola's Motion for a Preliminary Injunction requiring the YMCA daycare program to reinstate Jordan and to provide him with the reasonable accommodations he requires to attend their after-school childcare program successfully.

If Judge Carr had not granted this Preliminary Injunction, the impact upon Jordan and his family would have been significant. Jordan's mother, a single parent employed as lead draftsman at a local firm, had no other options for Jordan's after school care. It is probable she would have either lost her job or been forced to resign in order to care for him. In addition, Jordan would have lost the opportunity to interact and socialize with his peers, which he enjoys and desires, and which is crucial to his continued developmental progress.

Jordan Burriola is a high functioning autistic child, who attends the M.O.D.E.L. Community School, a school enrolling only children with autism. Professionals from his school who have worked directly with Jordan for the last two years believe he is ready to be mainstreamed into regular classes with typical peers. That transition has yet to be made, however, as the result of resistance by school officials to making modifications and providing accommodations, similar to the resistance of staff and administrators at the YMCA daycare program.

In this case, it took a Preliminary Injunction from a federal Judge to assure that Jordan will be provided the accommodations he needs and is entitled to have.

It is also significant that in his Opinion, Judge Carr gave a great deal of weight to recommendations of professionals who worked directly with Jordan, and who believed he could be successful in the daycare program with the appropriate supports, as opposed to the "opinion" of experts who testified about autism generally but were not familiar with Jordan as an individual.

The case is also particularly important because it is [appears to be] the first case in which a "direct threat" defense, raised on the basis of a child's disruptive behavior, has not succeeded. Defendants cited the risk of harm to other children and/or staff, if Jordan returned to the childcare program. However, Judge Carr, in his well-reasoned Opinion, found the defendants' claim not well taken because that "risk" can be "mitigated" by employing the very accommodations and modifications sought by the plaintiff.

This case differs from other cases where the "direct threat" defense failed, because the issue in those cases was not "misbehavior", but included, for example: use of "finger-stick" tests for diabetic children, use of an inhaler, availability of injections for severe allergic reactions . . . all socially considered more "medical" in nature than some of the symptomatic behaviors

associated with autism. We believe the “safety” issue simply masked real issue, which is the underlying and unspoken fear of autism generally, and particularly any behaviorally manifested disability.

Also in this case the "fundamental alteration of the program" defense failed as well. Childcare programs often argue, as here, that providing a 1:1 aide[s] either presents an undue burden or would fundamentally alter the nature of their program, but Judge Carr did a wonderful counter to this as well, pointing out that plaintiff never asked for a 1:1 aid, that ALL children will require 1:1 attention at some time and counselors need to be alert and available to provide it. Further, when MRDD has provided a 1:1 aide for other children [and PAID for it] there was no problem and it didn't constitute an "undue burden" or "fundamentally alter" the program.

## ABOUT THE ATTORNEY

The *Burriola* case was filed by Tom Zraik, an attorney who has practiced special education and disability law [IDEA, ADA] in the Toledo and Northwest Ohio area for over twenty years. Tom resigned his position as a staff attorney with Advocates for Basic Legal Equality, a legal services agency in Toledo, Ohio, in 1996, to pursue private practice.

Following the loss of his sight in 1968, Tom completed Rehabilitation at the Greater Pittsburgh Guild for the Blind and enrolled in college. He graduated from Bowling Green State University in 1974 with a Bachelor in Science in Education, and in 1977 was awarded his Juris Doctorate from the University of Toledo Law School.

Tom’s wife, Kathleen, currently his assistant and paralegal, previously worked as a licensed social worker and parent advocate for many years.

The Ability Center of Greater Toledo {"ACT"} is an independent living center serving the Northwest Ohio area. Although not involved in the *Burriola* case, ACT continues to support Tom in advocacy including informal conciliation, mediation, and litigation as necessary. The ACT is a named plaintiff in one on-going lawsuit, *Ability Center, et al. v. City of Sandusky*, [Federal District Court, Northern Ohio, Western Division] regarding the issue of curb cuts. [\* Kelly Dillery, a resident of Sandusky, is the “mom in a wheelchair” repeatedly arrested for riding in the road and “child endangering” by having her child on her lap. That, however, is another case.]

## News Release

For Immediate Release - January 5, 2001

### US COURT UPHOLDS ADA – CHILD TO RETURN TO DAYCARE

The US District Court in Toledo has ruled that Jordan Burriola, an 8-year-old child with autism, will be reinstated in a YMCA daycare program in accordance the Americans with Disabilities Act of 1990 (ADA). After twenty months of attendance, young Burriola was terminated when two specially trained counselors

left the program and no other counselors made reasonable attempts to accommodate his disability.

In handing down the decision, United States District Judge James G. Carr agreed with court decisions in other states in that “irreparable harm can exist when an individual is completely denied the opportunity to participate in the benefits, especially developmental benefits, of a public accommodation.” Judge Carr ordered daycare counselors who will work with Jordan to undergo free training offered by the M.O.D.E.L. Community School, that reasonable support strategies be implemented, and that Jordan be reinstated in the daycare program no later than January 20, 2001.

Acting upon a referral from the Ability Center of Greater Toledo, the Burriola family contacted Mr. Zraik to secure their rights under the ADA. The decision sends a clear message to all providers of services that discrimination based upon disability will not be tolerated in the United States.

Additional information regarding the ADA and the rights of individuals with disabilities can be obtained through the Ability Center of Greater Toledo at (419) 885-5733.

This News Release was prepared by Ken Mackowiak, Human Relations Director at the Ability Center of Toledo. (“ACT”)

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