

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
APRIL 27, 2018
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THERESA KIMES, individually and as
Guardian Ad Litem for her minor daughter
R.K.,

Plaintiff,

vs.

STATE OF HAWAII DEPARTMENT OF
EDUCATION,

Defendant.

CIV. NO. 16-00264 JMS-RLP

JURY INSTRUCTIONS

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Attached are the court's jury instructions in numerical order as read to
the jury.

DATED: Honolulu, Hawaii, April 27, 2018.



/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

COURT'S INSTRUCTION NO. 1

Members of the Jury:

You have now heard all of the evidence in the case and will soon hear the final arguments of the lawyers for the parties.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

COURT'S INSTRUCTION NO. 2

You, as jurors, are the judges of the facts. But in determining what actually happened in this case — that is, in reaching your decision as to the facts — it is your sworn duty to follow the law I am now defining for you.

You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I state to you. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

In deciding the facts of this case, you must not be swayed by sympathy, bias or prejudice as to any party. This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice. A legal entity is entitled to the same fair trial at your hands as is a private individual.

COURT'S INSTRUCTION NO. 3

As stated earlier, it is your duty to determine the facts, and in doing so you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in doing so, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

COURT'S INSTRUCTION NO. 4

Rules of evidence control what can be received into evidence. During the course of trial, when a lawyer asked a question or offered an exhibit into evidence and a lawyer on the other side thought that it was not permitted by the rules of evidence, that lawyer may have objected. If I overruled the objection, the question was answered or the exhibit received. If I sustained the objection, the question was not answered, and the exhibit was not received.

Whenever I sustained an objection to a question, you must not speculate as to what the answer might have been or as to the reason for the objection. You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken from the record; such matter is to be treated as though you had never known of it.

COURT'S INSTRUCTION NO. 5

During the course of the trial I may have occasionally made comments to the lawyers, or asked questions of a witness, or admonished a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I said during the trial in arriving at your own findings as to the facts.

COURT'S INSTRUCTION NO. 6

In this case, the parties have agreed, or stipulated, as to certain facts.

This means that they both agree that these facts are true. You should therefore treat these facts as having been conclusively proved.

COURT'S INSTRUCTION NO. 7

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the testimony and evidence in the case.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 8

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In evaluating the testimony of a witness, you may consider: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness’ memory; (3) the witness’ manner while testifying; (4) the witness’ interest in the outcome of the case, if any; (5) the witness’ bias or prejudice, if any; (6) whether other evidence contradicted the witness’ testimony; (7) the reasonableness of the witness’ testimony in light of all the evidence; and (8) any other factors that bear on believability. You may accept or reject the testimony of any witness in whole or in part. That is, you may believe everything a witness says, or part of it, or none of it.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

COURT'S INSTRUCTION NO. 9

A witness may be discredited or impeached by contradictory evidence, by a showing that: (1) the witness testified falsely concerning a material matter; or (2) at some other time, the witness said or did something that is inconsistent with the witness' present testimony; or (3) at some other time, the witness failed to say or do something that would be consistent with the present testimony had it been said or done.

If you believe that any witness has been so impeached, then it is for you alone to decide how much credibility or weight, if any, to give to the testimony of that witness.

COURT'S INSTRUCTION NO. 10

A legal entity may act only through natural persons — its agents or employees. In general, any agent or employee of a legal entity may bind the legal entity by acts and declarations made while acting within the scope of the authority delegated to him or her by the legal entity, or within the scope of the agent's or employee's duties to the legal entity.

COURT'S INSTRUCTION NO. 11

The burden is on the Plaintiff in a civil action such as this to prove every essential element of the claim by a “preponderance of the evidence.” A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who called them, and all the exhibits received in evidence, regardless of who produced them. If the proof fails to establish any essential element of the Plaintiff's claim by a preponderance of the evidence, you should find for the Defendant as to that claim.

COURT'S INSTRUCTION NO. 12

Plaintiff brings a claim under Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 504 of the Rehabilitation Act requires the State of Hawaii Department of Education to provide a free and appropriate public education to its students, regardless of the nature or severity of a student's disability. An appropriate education includes the provision of regular or special education and related aids and services that are designed to meet the disabled student's educational needs as adequately as the needs of nondisabled students. That is, the State of Hawaii Department of Education need only design education programs for disabled students that are intended to meet the students' educational needs to the same degree that the needs of nondisabled students are met, not more.

Throughout this case, you have heard about another federal statute, the Individuals with Disabilities Education Act or IDEA. And you have heard about some of the components of the IDEA, including Individualized Education Programs or IEPs and behavioral support and crisis plans. The IDEA also requires

that a disabled student who is eligible for special education be placed in the least restrictive educational environment reasonable. To be clear, in this context “restrictive” does not refer to restraint of a child, but relates to the educational environment itself.

But Plaintiff has not brought a claim under the IDEA, and you will not be asked to return a verdict about the State of Hawaii Department of Education’s compliance with the IDEA. Evidence of compliance or noncompliance with the IDEA may be relevant to your determination of Plaintiff’s claim under the Rehabilitation Act, but a violation of the IDEA by itself is not sufficient to show a violation of the Rehabilitation Act.

COURT'S INSTRUCTION NO. 13

In order to prevail on her claim, Plaintiff must prove each of the following elements by a preponderance of the evidence:

- (1) the State of Hawaii Department of Education received federal financial assistance; and
- (2) ReagAnn was a qualified individual with a disability; and
- (3) the State of Hawaii Department of Education denied ReagAnn a reasonable accommodation that she needed in order to enjoy meaningful access to the benefits of her public education; and
- (4) the State of Hawaii Department of Education acted with deliberate indifference in denying ReagAnn such reasonable accommodation.

The parties have stipulated that the first two elements of Plaintiff's claim have been satisfied. That is, the parties agree that as of March 2016, the State of Hawaii Department of Education received federal financial assistance and that ReagAnn was a qualified individual with a disability.

Thus, your task is to determine whether Plaintiff has proved the third and fourth elements of her claim: that ReagAnn was denied a reasonable accommodation that she needed to enjoy meaningful access to the benefits of her

public education, and that the State of Hawaii Department of Education acted with deliberate indifference in denying ReagAnn such reasonable accommodation.

COURT'S INSTRUCTION NO. 14

As to the third element, the State of Hawaii Department of Education must provide a disabled student a reasonable accommodation that the student needs to enjoy meaningful access to the benefits of a public education.

An accommodation need only be reasonable. Reasonableness does not require the State of Hawaii Department of Education to make fundamental or substantial alterations to its programs. But reasonableness does require a fact-specific, individualized analysis of the disabled student's circumstances and the accommodations that would allow the student to enjoy meaningful access to a public education.

Meaningful access means the ability to participate in and benefit from a public education. The State of Hawaii Department of Education is required to provide more than mere physical access or the opportunity for partial participation. It must provide programs for disabled students that are designed to meet each disabled student's individual educational needs as adequately as the needs of non-disabled students are met. That is, meaningful access assures evenhanded treatment of disabled students. But meaningful access does not assure equal results.

COURT'S INSTRUCTION NO. 15

As to the fourth element, Plaintiff must prove that the State of Hawaii acted with deliberate indifference in denying ReagAnn a reasonable accommodation that she needed to enjoy meaningful access to her public education. Deliberate indifference does not require a showing of personal ill will or animosity toward the disabled student, and it requires more than mere negligence. Instead, deliberate indifference requires a deliberate choice.

To show deliberate indifference, Plaintiff must prove:

(1) the State of Hawaii Department of Education knew that harm to a federally protected right was substantially likely. Plaintiff may prove this knowledge by showing that the State of Hawaii Department of Education was alerted to ReagAnn's need for a reasonable accommodation, or the need for a reasonable accommodation was obvious; and

(2) the State of Hawaii Department of Education failed to act on that likelihood. Failure to act on that likelihood includes a failure to undertake a fact-specific investigation as to whether the particular accommodation is reasonable.

COURT'S INSTRUCTION NO. 16

If you find that the State of Hawaii Department of Education violated Section 504 of the Rehabilitation Act, Plaintiff is entitled to damages in an amount that you determine will fairly and adequately compensate Plaintiff for any injury that was caused to ReagAnn as a result of that violation. Injury includes past, present, and reasonably probable future disability, pain, and emotional distress. Emotional distress includes mental worry, anxiety, anguish, suffering and grief, where they are shown to exist.

ReagAnn's mother Theresa Kimes is not seeking and is not entitled to recover any damages for her own alleged personal injuries because she is bringing this case on behalf of ReagAnn.

Compensation must be reasonable. You are not permitted to award speculative damages, which means compensation for loss or harm that, although possible, is conjectural and not reasonably probable.

Plaintiff is not required to present evidence of the monetary value of ReagAnn's pain or emotional distress. She need only prove the nature, extent, and effect of ReagAnn's injury, pain, and emotional distress. It is for you, the jury, to determine the monetary value of such pain or emotional distress using your own judgment, common sense, and experience.

COURT'S INSTRUCTION NO. 17

Of course, the fact that I have given you instructions concerning the issue of the Plaintiff's damages should not be interpreted in any way as an indication that I believe Plaintiff should, or should not, prevail in this case.

COURT'S INSTRUCTION NO. 18

Some of you took notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes, or those of other jurors.

COURT'S INSTRUCTION NO. 19

During the course of the trial, questions were posed by members of the jury. You should evaluate the answers to those questions in the same manner that you evaluate all of the other evidence.

COURT'S INSTRUCTION NO. 20

Remember that even during your deliberations, my mandate to you still applies that you not read any news stories or articles, listen to any radio, or watch any television reports about the case or about anyone who has anything to do with it. Do not do any research, such as consulting dictionaries, searching the internet, or using other reference materials, and do not make any investigation about the case on your own. And do not discuss the case in any manner with others, directly or through social media. You may only discuss the case with your fellow jurors during your deliberations, with all of you present.

COURT'S INSTRUCTION NO. 21

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

COURT'S INSTRUCTION NO. 22

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience.

(Explain Verdict Form)

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please put your message or question in a note, and have the foreperson sign the note. The foreperson will then contact the Courtroom Manager via the telephone located in the hallway outside the jury room. The Courtroom Manager will pick up the note and bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time. For example, you should never state that "x" number of jurors are leaning or voting one way and "x" number of jurors are leaning or voting another way.