

STANDING/MOOTNESS

Scenario 1:

Your program's Housing Unit has been asked by a nonprofit fair housing agency, whose purpose is "to educate and promote fair housing and to oppose segregation based on the protected classes found in the Fair Housing Act of 1968 as amended," about possibly suing a large newspaper publisher for accepting classified advertisements for rental property which includes such allegedly objectionable phrases as "mature person" "ideal for quiet and reserved single and/or couple;" "professional male only" and "quiet, mature setting." The agency complains to you that such phrases are code for "no children." The agency has already filed a complaint with the state human rights commission which found probable cause. While that complaint was pending, the newspaper published newspaper articles, and testified before the legislature, and sent letters to HUD making statements that ridiculed and demeaned the agency. HUD informed the agency recently that it is not renewing the Fair Housing Initiatives Program Grant for next year.

Background Law:

Under the FHA, it is illegal to print or publish advertisements for the sale of rental of property which indicates any preference, limitation, or discrimination based on any of the classes protected by the FHA. It is also illegal under the FHA to "coerce, intimidate, threaten, or interfere" with any person because that person has exercised rights under the FHA.

Standing Questions:

Is there injury in fact, i.e. an invasion of a judicially cognizable interest that is a) concrete and particularized and b) actual or imminent (as opposed to conjectural or hypothetical)?

Is there a causal connection between the injury and the conduct complained of?

Did the loss of funding arise from the retaliatory conduct? How can you know given that FHIP grants are notoriously discretionary and limited?

Will the injury be redressed by a favorable decision?

If the ads are ruled discriminatory, will the relief sought redress the injury claimed? Will it make a difference if you seek only injunctive relief? Only damages?

Would it be preferable and easier to use an individual to bring the case?

Individual v. organizational standing Note: In this scenario, we do not need to consider prudential considerations because the FHA expressly allows enforcement of third-party rights by “private attorneys general.”

Mootness Question:

What if the newspaper publisher’s Board of Directors adopts a new policy that says “henceforth, no classified ads will be accepted that do not conform to the requirements of the FHA.”

Does this moot the case? (hint: “voluntary cessation of an illegal act”)

Scenario 2:

A high school junior has contacted your program’s Civil Rights Unit about suing the local Board of Education to challenge its state-authorized policy of requiring students who refuse to recite the Pledge of Allegiance to stand while the Pledge is recited by others. Under state law, Board of Education are allowed to have such policies; however, students may be excused from reciting the pledge (but not from standing) with parental consent. The local BOE has adopted such a policy. While the pledge is recited every day, this young man has never recited, and never been required to recite, the pledge, and has never stood up for the pledge since he moved into the district 5 years earlier. His parents have never been asked to consent to his refusal. Recently though, apparently because of a scheduling change, the daily recitation of the pledge took place in the student’s 3rd period class. When the student refused to recite or stand up, the teacher became very angry, yelled at the student, calling him unpatriotic and called the principal to have him removed from her class. The principal removed the student and he remained in the principal’s office for the rest of the day. The principal sent home the district’s policies to the student’s parents and asked for them to sign and return the policies which they did. No further action has been taken against the student. He (with the consent of his parents) wants to challenge the state law and the policy as unconstitutional under the First Amendment.

Background Law:

The Supreme Court has held that a student has a First Amendment right to remain quietly seated during the pledge on the grounds of personal or political belief.

Standing Questions:

Is there injury in fact, i.e. an invasion of a judicially cognizable interest that is a) concrete and particularized and b) actual or imminent (as opposed to conjectural or hypothetical)?

First of all, is there injury to the student or is the injury to his parents? Is he merely asserting the 3rd party rights of others?

If there is injury to the student, what is the nature of that injury?

Is there a causal connection between the injury and the conduct complained of? Will the injury be redressed by a favorable decision?

Will it make a difference if the student seeks only injunctive relief? Only damages?

How likely is it that this student who has gone 5 years without an incident will be subject to this in the future? Isn't this really Lyons redux? (See *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)).

Prudential Considerations:

Isn't this really just a generalized grievement – i.e. a desire to get a ruling on the underlying constitutional claim by a person with no particular stake in the outcome?

Mootness question:

What happens if the student graduates while the case is pending? Is the case moot? (hint: “capable of repetition but evading review”) Can the case be saved, for injunctive relief purposes, under capable of repetition yet evading review test?

EXHAUSTION

Scenario 3:

Your program's Child Law Unit has identified the following problems with the School District's special education program: failure to notify parents of meetings as required by law; failure to provide parents with legally required progress reports; failure to provide appropriate training to school staff.; failure to perform timely evaluations and reevaluations of disabled children; failure to provide parents with required procedural safeguards regarding identification, evaluation, and accommodation of otherwise disabled children; and failure to perform legally required responsibilities in a timely manner, including providing and implementing transition plans, transitional support services, assistive technology services, and declassification services for children with disabilities.

Your unit wants to file a class action lawsuit against the School District under the Individuals with Disabilities Education Act, 20 U.S.C. 1401 et. seq., as well as 504 of the Rehabilitation Act, 29 U.S.C. 791 and 42 U.S.C. 1983 to try to get the School District to fix these systemic problems.

The Unit has 3 open cases with children who might be good plaintiffs: John, attends the only Middle School in the District, Sally who attends the only Elementary School in the district and Charles who attends the only High School. John and Sally are both classified as special education, and are educated in a special education classroom. Both have inadequate IEPs, do not receive all the services identified in the IEP, and need assisted technology evaluations. Charles attends High School in regular education classrooms. He is classified as learning disabled, and he receives resource room services and poorly implemented testing modifications. The School District has not developed an adequate transition plan for Charles or provided him with special education services that would allow him to benefit from his educational program. School staff have not been informed of or trained in implementing Charles's Individualized Education Plan.

Background Law:

It is well settled that the IDEA requires an aggrieved party to exhaust all administrative remedies before bringing a civil action in federal or state court. 20 U.S.C. 1415(i)(2). The exhaustion requirement also applies where plaintiffs seek relief under other federal statutes when relief is also available under the IDEA.

Exhaustion Questions:

How can the plaintiffs plead their case to defeat a potential motion to dismiss?

Is exhaustion futile in this case? Are these students alleging a systemic harm or individual violations which a hearing officer could remedy?

Will it make a difference if the case is filed as a class action?

Does it make a difference that the students do not seek money damages? What if they did seek money damages?

Alternatively should the named plaintiffs simply exhaust administrative remedies first?

Sample