

Final Grade of a 'C' Prompts Personal Injury Lawsuit

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Brian Marquis, a student at the University of Massachusetts at Amherst, was so devastated when he received a 'C' in his political philosophy class when he had thought that he had earned an 'A-minus' that he decided to sue the school. The political philosophy class that Marquis was enrolled in was graded on a curve by a teaching assistant. The curve transformed Marquis' 'A-minus' into a 'C'.

In January, Marquis filed a 15-count personal injury lawsuit in U.S. District Court in Springfield alleging that the university had violated his civil rights and contractual rights, and intentionally inflicted "emotional distress" on him.

"This is not something I relish," Marquis said. "This is not an issue of me walking into court and saying, "I don't like the way this professor grades this paper," which is purely their academic prerogative. This is an issue where the empirical data was quite clear and convincing to any reasonable mind that my performance was well within a higher range."

At the center of Marquis' lawsuit and grief is Jeremy Cushing, a teaching assistant and a graduate student in philosophy. Marquis says that at the start of the semester, Cushing explained how the course would be graded. Cushing told the class that there would be three major tests, each carrying a weight of 25 percent of the final grade. The students would be required to write four papers, with each paper worth 5 percent of the final grade. Class participation would account for the final 5 percent of the grade. A curve scale was not mentioned. Based on the formula laid out by Cushing, Marquis calculated that his final grade was 92.5 percent, which should have been an 'A-minus', but when he checked his grade online he found that he had gotten a 'C' in the class.

Marquis e-mailed Cushing to complain about his final grade in the class. Cushing replied and explained to him that he had graded more strictly on the third major test because the students had already had a full semester to learn how to write correctly for a philosophy class. Cushing explained that as a result, Marquis had actually earned a final grade of 84 percent. Cushing said that the students' numerical scores seemed too high to him so he graded everyone on a curve before assigning a letter grade. He said that he thought a 'C' was a good reflection of Marquis' work in the class.

District Court Judge Michael A. Ponsor disagreed with Marquis. After a brief hearing with Marquis and a lawyer for UMass at Amherst, Ponsor dismissed the lawsuit against the university. At the brief hearing, Peter Michelson, a lawyer for the university, told the judge that Marquis' suit was, more or less, baloney. He posed the question, "Does the court really want to put itself in the business of reviewing, under some constitutional or federal statutory doctrine, the propriety of the grades which a student has received?" Judge Ponsor's dismissal of the **personal injury lawsuit** gives a fairly decisive answer to that question.

ETS Pays \$11.1 Million to Settle Teacher Test Lawsuit

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More than 4,100 prospective seventh through twelfth grade classroom teachers who were falsely told they had failed the PRAXIS Principles of Learning and Teaching (PLT) Grades 7 - 12 exam due to an Educational Testing Service (ETS) scoring error (see *Examiner* Winter 2004-2005, Fall 2004, and Spring-Summer 2004) are eligible for compensation from a \$11.1 million pool created in a landmark settlement of the resulting class action lawsuits. The educators took the test between January 1, 2003, and April 30, 2004, a period when ETS admits it wrongly scored short-answer items.

According to the terms of the legal agreement, test-takers who received erroneously failing scores can file a short form to receive about \$500 each automatically or provide more detailed information to make larger monetary claims. The settlement fund is designed to cover "lost wages, decreased earning capacity, delayed graduation, personal injuries, mental anguish, psychological injury, incidental damages, humiliation and embarrassment, out of pocket losses and other forms of damages." The settlement pool also makes an updated score report available for free to 23,000 other PRAXIS PLT candidates whose scores were also reported as inaccurately low but whose pass-fail status was not changed by correcting the error.

A court-appointed Special Master will review submissions and recommend payment award levels to Federal District Court Judge Sarah Vance, who has been overseeing the case. More than two dozen lawsuits were consolidated in her New Orleans courtroom. Though the firm denied all legal claims, ETS settled before trial.

Spanish-Language Test Accommodations: Recommended or Required by NCLB?

Coachella Valley v. State of California

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As of early 2005, the California Department of Education had an English-only testing policy for all California Standards Tests for grades K-12. These tests, which are mandated by the federal No Child Left Behind Act (NCLB), are used to measure the yearly progress of students and schools. In June 2005, the Coachella Valley Unified School District, along with nine other school districts from throughout California, several community groups, and a handful of individual students and their guardians, sued the State of California, demanding that the state provide special testing for students who are still learning English. The school districts sought reasonable accommodations, such as tests in Spanish or modified English-language tests, for their many students—most of whom are Spanish speakers—who have yet to fully master English but still must sit for the mandated annual subject tests. Such language accommodations would not be novel; fourteen other states—including New York, Massachusetts, and Texas,—have already provided specialized subject testing for English learners.

In June 1998, voters approved Proposition 227, an initiative that effectively banned the majority of bilingual education by requiring that most classes be taught in English. Bilingual education was largely replaced with English immersion.

However, in 1965 Congress passed the Elementary and Secondary Education Act (ESEA) to improve education throughout the United States through federal funding primarily directed at disadvantaged students. According to its statement of purpose, ESEA is meant to “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic standards and state academic assessments.” The 2002 passage of NCLB was only the most recent update to ESEA. The language of NCLB indicates a strong intent on Congress’s part to create some means, at least for a LEP student’s first few years in the U.S. educational system, of more adequately measuring what students know.

Like many federal laws, the requirements set down by NCLB have the potential to conflict with state laws and practices.

Proposition 227 has withstood challenges in the California courts, but *Coachella* is not about having students receive education in their native languages. Rather, it is about having students be tested in the language best suited to show how much they know about subjects like math and science.

Result: While conceding that the question of how NCLB assessments should be conducted might present different issues from those dealt with by Prop 227, the court concluded that it could not find the decision to assess all students in English is arbitrary and capricious, given that they are taught largely in English. The court could not conclude that it is arbitrary or capricious for California to determine that translation and evaluation of assessments in so many languages is impracticable.

Parent Sues Over Grade That Hurt 4.5 Average

Breaking News, Latest News & World News And Opinions - 3V8.org March 12, 2007

The parent of a Sissonville High School student is suing a teacher and the school board over a failing grade the student received on a leaf project in her advanced biology class.

Officials with the state's largest teachers' union say they're closely watching the litigation for its potential to have far-reaching effects on how teachers hand out grades.

The student is identified only as "L.H." in the lawsuit filed in Kanawha County Circuit Court. She is described as a scholar who maintained a 4.5 grade point average prior to the incident. The student's parent, identified only as J.H., filed the lawsuit last month on behalf of the student.

According to the lawsuit, the student was given a failing grade for not turning in a biology project on the date it was due. The lawsuit says the girl was out of school that day on an approved student council trip to Jackson's Mill in Lewis County.

"The plaintiff has a right to be out of school on approved school activities, such as student council, without being punished by a teacher who intentionally manipulated the grading system and used the grade as a form of punishment to make sure that the minor plaintiff's 4.5 GPA was destroyed," the lawsuit says.

The student was scheduled to attend a student council conference from Sunday, Oct. 15, 2006 through the following Tuesday, Oct. 17. The leaf project — an assignment in which students typically collect and classify leaves — was due Tuesday.

According to the lawsuit, the student had completed her project that Saturday and left for the student council leadership training at 10 a.m. Sunday. She returned from the trip after the end of the school day Tuesday. She turned in her project Wednesday morning.

"At no time was the minor plaintiff told by the teacher that she would be punished for being a part of student council by being required to turn her project in prior to the due date," the lawsuit says.

Attorneys J. Michael Ranson and Cynthia Ranson, who are representing the student and her parents, could not be reached for comment.

Sissonville High teacher Jane Schultz, who is named in the lawsuit along with the Kanawha County school board, declined to comment because the case is ongoing.

Nancy Walker, assistant principal at Sissonville High, also declined to comment.

Jim Withrow, attorney for the Kanawha school board, said he stands by Schultz's actions.

Result: Stay Tuned