Civil Rights of Individuals with Disabilities: The Opinions of Judge Sotomayor

(name redacted)
Legislative Attorney

(name redacted)
Legislative Attorney

June 23, 2009

Congressional Research Service
7-....
www.crs.gov
R40640

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Judge Sonia Sotomayor was nominated by President Obama to the U.S. Supreme Court on May 26, 2009. This report examines selected opinions written by Judge Sotomayor relating to the civil rights of individuals with disabilities and includes a discussion of cases relating to the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), and the Individuals with Disabilities Education Act (IDEA). In addition, selected dissents, concurrences, and decisions where Judge Sotomayor joined the majority are examined.

Judge Sotomayor's decisions are generally supportive of individuals with disabilities, but she does not always rule in favor of plaintiffs with disabilities. In her most discussed decision on disability issues, *Bartlett v. New York State Board of Bar Examiners*, she anticipated the legislative discussions surrounding the enactment of the ADA Amendments Act by finding that the use of self accommodations did not mean that the plaintiff was not an individual with a disability. While analyzing the statutory and regulatory language, Judge Sotomayor also examined the implications of various legal arguments noting that if a definition of disability is based on outcomes alone, it would preclude coverage of many individuals who have worked to overcome their disabilities. As is indicated by *Bartlett* and Judge Sotomayor's decisions relating to protection and advocacy agencies, she appears to look at the general purposes of a statute when interpreting its specific provisions.

Judge Sotomayor's decisions often turn on the particular facts presented. Judge Sotomayor also examines the statutory language at issue, as well as the applicable regulations and guidance to inform her decisions. She also has relied upon the reasoning of other circuits in arriving at her decisions.

Contents

Contacts

Introduction

Judge Sonia Sotomayor was nominated by President Obama to the U.S. Supreme Court on May 26, 2009. This report examines selected opinions written by Judge Sotomayor relating to the civil rights of individuals with disabilities and includes a discussion of cases relating to the Americans with Disabilities Act (ADA),[1] Section 504 of the Rehabilitation Act,[2] the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI),[3] and the Individuals with Disabilities Education Act (IDEA).[4] In addition, selected dissents, concurrences, and decisions where Judge Sotomayor joined the majority are examined.

Judge Sotomayor's decisions are generally supportive of individuals with disabilities, but she does not always rule in favor of plaintiffs with disabilities. In her most discussed decision on disability issues, *Bartlett v. New York State Board of Bar Examiners*,[5] she anticipated the legislative discussions surrounding the enactment of the ADA Amendments Act by finding that the use of self accommodations did not mean that the plaintiff was not an individual with a disability.[6] While analyzing the statutory and regulatory language, Judge Sotomayor also examined the implications of various legal arguments noting that if a definition of disability is based on outcomes alone, it would preclude coverage of many individuals who have worked to overcome their disabilities. As is indicated by *Bartlett* and Judge Sotomayor's decisions relating to protection and advocacy agencies,[7] she appears to look at the general purposes of a statute when interpreting its specific provisions.

Judge Sotomayor's decisions often turn on the particular facts presented. For example, in *Pell v. Columbia University*,[8] the specific facts surrounding the allegations of hostility to the plaintiff's dyslexia and the alleged discrimination regarding a foreign language requirement were closely examined.[9] Analysis of other decisions shows Judge Sotomayor also examines the statutory language at issue,[10] as well as the applicable regulations and guidance[11] to inform her decisions. She also has relied upon the reasoning of other circuits in arriving at her decisions.[12]

---

[1] 42 U.S.C. §12101 *et seq.*

[2] 29 U.S.C. §794.

[3] 42 U.S.C. §10801 et seq.

[4] 20 U.S.C. §1400 *et seq.*

[5] 2001 U.S. District LEXIS 11926 (S.D.N.Y. Aug. 15, 2001). See e.g., Jim Dwyer, "On the Bench with Fairness and Empathy," NEW YORK TIMES A-21 (May 27, 2009).

[6] See discussion *infra* pp. 3-5.

[7] See *Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Hartford Board of Education*, 464 F.3d 229 (2d Cir. 2006).

[8] 1998 U.S. Dist. LEXIS 407 (S.D.N.Y. Jan. 21, 1998).

[9] See also *Lloret v. Lockwood Greene Engineers, Inc.*,1998 U.S. Dist LEXIS 3999 (S.D.N.Y. 1998); *Brown v. Parkchester South Condominiums*, 287 F.3d 58 (2d Cir. 2002); *Equal Employment Opportunity Commission v. J.B. Hunt Transport, Inc.*, 321 F.3d 69 (2d Cir. 2003).

[10] See, e.g., *Protection & Advocacy for Persons with Disabilities v. Mental Health & Addiction Services*, 448 F.3d 119 (2d Cir. 2006).

[11] See, e.g., *Bartlett v. New York State Board of Bar Examiners*, 1998 U.S. Dist. LEXIS 407 (S.D.N.Y. Jan. 21, 1998); *Norville v. Staten Island University*,196 F.3d 89 (2d Cir. 1999); *Taylor v. Vermont Department of Education et al.*, 313 F.3d 768 (2d Cir. 2002).

[12] *Parker v. Columbia Pictures Industries*, 204 F.3d 326 (2d Cir. 2000); *Protection & Advocacy for Persons* (continued...)

The Americans with Disabilities Act (ADA)

Overview

The Americans with Disabilities Act (ADA)[13] is a broad civil rights act prohibiting discrimination against individuals with disabilities. As stated in the act, its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[14] The ADA provides broad nondiscrimination protection for individuals with disabilities and is divided into five titles: employment (Title I); public services (Title II); public accommodation and services operated by private entities (Title III); telecommunications (Title IV); and miscellaneous provisions (Title V). While serving on the Second Circuit and the district court, Judge Sotomayor has written, joined in, and dissented in several ADA decisions.

Decisions on the Definition of Disability

Statutory Definition

The threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability. Several Supreme Court decisions have interpreted the definition of disability, generally limiting its application.[15] After these Supreme Court interpretations, lower court decisions also interpreted the definition of disability strictly. Congress responded to these decisions by enacting the ADA Amendments Act, P.L. 110-325, which rejects the Supreme Court and lower court interpretations and amends the ADA to provide broader coverage.[16] Two of the major changes made by the ADA Amendments Act are to expand the current interpretation of when an impairment substantially limits a major life activity (rejecting the Supreme Court's interpretation in *Toyota*), and to require that the determination of whether an impairment substantially limits a major life activity must be made without regard to the use of mitigating measures (rejecting the Supreme Court's decisions in *Sutton*, *Murphy*, and *Kirkingburg*).

The ADA Amendments Act defines the term disability with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))."[17] Although this is essentially the same statutory language as was in the original ADA, P.L. 110-325 contains new rules of construction regarding the definition of disability, which provide that

(...continued)

Disabilities v. Mental Health & Addiction Services, 448 F.3d 119 (2d Cir. 2006).

[13] For a more detailed discussion of the ADA see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by (name redacted).

[14] 42 U.S.C. §12101(b)(1).

[15] *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc*., 527 U.S. 516 (1999); *Albertsons, Inc. v. Kirkingburg*, 527 U.S. 555 (1999); *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2002).

[16] For a more detailed discussion of the ADA Amendments Act see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by (name redacted).

[17] 42 U.S.C. §12102(3).

- the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;
- the term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act;
- an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active; and
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.[18]

Judge Sotomayor's Decisions and Dissent

Judge Sotomayor's opinions on the definition of disability all predate the ADA Amendments Act. Although her last opinion in the *Bartlett v. New York State Board of Law Examiners*[19] series of decisions foreshadows some of the rationale for the ADA Amendments Act, much of her reasoning in *Bartlett* and other ADA decisions are based on specific factual issues, regulatory interpretations, and case law.

Bartlett v. New York State Board of Law Examiners[20] is Judge Sotomayor's most discussed decision on disability issues. Essentially, Judge Sotomayor held that a law school graduate with a learning disability was an individual with a disability and, under the ADA, was entitled to accommodations, including extra time, while taking the bar examination.

The procedural history of this case is complicated. In her initial decision at the district court level, Judge Sotomayor held that the plaintiff was an individual with a disability under both the ADA and Section 504, although when compared to the average person in the general population, the plaintiff was found not to be substantially limited in the major life activity of reading due to her self accommodations. However, Judge Sotomayor found that taking the bar exam "implicates the major life activity of working" and that when the plaintiff's reading skills were compared with individuals with comparable training, her reading skills were considerably below normal and, therefore, she was entitled to reasonable accommodations.[21] On appeal, the Second Circuit agreed that the plaintiff was an individual with a disability but on different grounds. The Second Circuit rejected the consideration of the plaintiff's ability to self accommodation and found that she was limited in the major life activity of reading.[22] The Supreme Court then granted *certiorari* and

[18] 42 U.S.C. 12102(4).

[19] 970 F. Supp. 1094 (S.D.N.Y. 1997) (opinion by Judge Sotomayor); reconsideration denied, 2 F.Supp.2d 388 (S.D.N.Y. 1997) (opinion by Judge Sotomayor); aff'd in part, vacated in part, 156 F.3d 321 (2d Cir. 1998); vacated remanded by 527 U.S. 1031 (1999); aff'd in part, vacated in part, remanded in part, 226 F.3d 69 (2d Cir. 2000); on remand, 2001 U.S. District LEXIS 11926 (S.D.N.Y. Aug. 15, 2001) (opinion by Judge Sotomayor, sitting by designation).

[20] *Id.*

[21] 970 F. Supp. 1094 (S.D.N.Y. 1997).

[22] 156 F.3d 321 (2d Cir. 1998).

vacated and remanded the Second Circuit's decision[23] for reconsideration in light of the Supreme Court's decision in *Sutton v. United Air Lines*,[24] *Murphy v. United Parcel Service*,[25] and *Albertsons v. Kirkingburg*.[26] These decisions, as noted above, limited the definition of disability by holding that corrective devices and mitigating measures must be considered in determining whether an individual is an individual with a disability and were specifically rejected by Congress in the enactment of the ADA Amendments Act. On remand from the Supreme Court, the Second Circuit remanded the decision to the district court to consider whether the plaintiff's reading ability was substantially limited by any measure and whether the plaintiff was substantially limited in the major life activity of working.[27]

Bartlett's long procedural journey finally ended when Judge Sotomayor held a four-day remand trial with testimony by numerous experts and witnesses.[28] Judge Sotomayor, guided by the Supreme Court's decisions and factual testimony, held that the plaintiff was substantially limited in the major life activity of reading and, in the alternative, substantially limited in the major life activity of working. Although Judge Sotomayor noted that the plaintiff used certain self accommodations or coping strategies, she found that these "merely help plaintiff function, but do not affect her ability to read" and, therefore, were not relevant in a determination of whether the plaintiff has a reading disability. Judge Sotomayor, anticipating the legislative discussions surrounding the enactment of the ADA Amendments Act, stated the following:

> A definition of disability based on outcomes alone, particularly in the context of learning disabilities, would prevent a court from finding a disability in the case of any individual like Dr. Bartlett who is extremely bright and hardworking, and who uses alternative routes to achieve academic success.[29]

Judge Sotomayor's decisions in *Bartlett* both anticipated the Supreme Court's denial of the use of mitigating measures and anticipated Congress's rejection of the Supreme Court's interpretation. In the first *Bartlett* case, Judge Sotomayor held that the plaintiff was an individual with a disability, but did so by finding that she was substantially limited in the major life activity of working. Judge Sotomayor found that the plaintiff was not substantially limited in the activity of reading since her self accommodations enabled her to read. This use of the mitigating measure of the plaintiff's self accommodation pre-shadowed the Supreme Court's interpretation of the definition of disability which found that the decision on whether an individual has a disability is made with the use of whatever mitigating measure the individual employed. Specifically, the Supreme Court in *Albertsons v. Kirkingburg*[30] held that a trucker with monocular vision who was able to compensate for this impairment was not a person with a disability. However, Judge Sotomayor arrived at her interpretation by reliance on ADA regulations interpreting the term

[23] 527 U.S. 1031 (1999).

[24] 527 U.S. 471 (1999).

[25] 527 U.S. 516 (1999).

[26] 527 U.S. 555 (1999).

[27] 226 F.3d 69 (2d Cir. 2000).

[28] *Bartlett v. New York State Board of Law Examiners*, 2001 U.S. Dist. LEXIS 11926 (S.D.N.Y. August 15, 2001).

[29] A colloquy was held during the House debates on the ADA Amendments Act between Representatives Pete Stark and George Miller on the subject of the meaning of "substantially limits" in the context of learning, reading, writing, thinking, or speaking. The colloquy found that an individual who has performed well academically may still be considered an individual with a disability. 153 Cong. Rec. H. 8291 (September 17, 2008).

[30] 527 U.S. 555 (1999).

"substantially limited," a regulatory interpretation which was rejected by the ADA Amendments Act.[31] The Second Circuit, after the case was remanded from the Supreme Court, found that Judge Sotomayor had properly considered the plaintiff's self accommodations but found that Judge Sotomayor's findings that the plaintiff had average skills on some measures of reading was insufficient to conclude that the plaintiff was not substantially limited in reading. When Judge Sotomayor considered *Bartlett* on remand, she addressed the Second Circuit's comments and, after examining additional evidence, concluded that the plaintiff was substantially limited in the major life activity of reading. And, as noted above, Judge Sotomayor anticipated some of the legislative discussions surrounding the enactment of the ADA Amendments Act regarding a "catch 22" situation by finding that the use of self accommodations did not mean that the plaintiff was not an individual with a disability.[32]

The third prong of the definition of disability, being regarded as having a disability, was at issue in *Equal Employment Opportunity Commission v. J.B. Hunt Transport, Inc.*[33] The majority in *Hunt* found no violation of the ADA and held that the employer had not perceived the applicants to have a disability. The majority reasoned that the alleged inability to drive a truck due to the use of certain medications did not constitute a substantial limitation on working and, therefore, the plaintiffs were not regarded as having a disability. Judge Sotomayor wrote a strong dissent, disagreeing with the majority's factual determinations and finding that the Equal Employment Opportunity Commission (EEOC) had provided substantial evidence that the employer had believed that the plaintiffs were unfit to drive a truck and not merely "unsuited for long-distance driving in Hunt's 40-ton trucks.... "[34]

Title I—Employment

Statutory Provisions

Title I of the ADA provides that no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment.[35] The term employer is defined as a person engaged in an industry affecting commerce who has 15 or more employees.[36] If the issue raised under the ADA is employment related, and the threshold issues of meeting the definition of an individual with a disability and involving an employer employing over 15 individuals are met, the next step is to

[31] P.L. 110-325 specifically states that the current Equal Employment Opportunity Commission (EEOC) regulations defining the term "substantially limits" as "significantly restricted" are "inconsistent with congressional intent, by expressing too high a standard." 42 U.S.C. §12101 note.

[32] See, e.g., "A multitude of people who manage their disabilities effectively through medication prosthetics, hearing aids, or other 'mitigating measures' are viewed as 'too functional'—or not 'disabled enough'—to be protected under the ADA.... It seems to me that the last message we would want to send to Americans with disabilities ... is the less you manage your disability, the less you try, the more likely you are to be protected under civil rights laws." Statement of Cheryl Sensenbrenner, Chair of the American Association of People with Disabilities, *ADA Restoration Act Hearing of 2007, Hearing on H.R. 3195 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 110th Cong., at 25-26; quoted in H.REPT. 110-730, pt 2, at 10 (2008).

[33] 321 F.3d 69 (2d Cir. 2003).

[34] *Id.* at 80.

[35] 42 U.S.C. §12112(a).

[36] 42 U.S.C. §12111(5).

determine whether the individual is a qualified individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job.

Decisions Written by Judge Sotomayor

Judge Sotomayor's decisions have not always found for an individual with a disability. Whether an individual is a qualified individual with a disability was at issue in *Valentine v. Standard & Poor's*.[37] The plaintiff, an analyst at Standard & Poors, had been diagnosed with bipolar disorder. His job performance had deteriorated and after he left "an obnoxious and taunting" voice mail message for a co-worker, his employment was terminated. Judge Sotomayor found no discrimination under the ADA stating that "the ADA does not protect disabled employees from all adverse employment decisions."[38] Whether or not the misconduct was a manifestation of a disability was seen as irrelevant since "the ADA does not immunize disabled employees from discipline or discharge for incidents of misconduct in the workplace."[39]

An employer's responsibilities regarding reasonable accommodations for an employee was at issue in *Parker v. Columbia Pictures Industries*.[40] In *Parker* the employee sustained a back injury at work, had back surgery, and used six months of paid short-term disability leave. After the disability leave was exhausted, the employee contacted the employer about part-time work. The employer terminated the employment and advised the employee about long-term disability benefits, and the employee applied for the long-term disability benefits and Social Security disability benefits. The Second Circuit, in an opinion by Judge Sotomayor, vacated the district court's grant of summary judgment for the employer and remanded the case for a determination of whether there was a triable question of fact. Judge Sotomayor observed the following:

> The duty to make reasonable accommodations does not, of course, require an employer to hold an injured employee's position open indefinitely while the employee attempts to recover, nor does it force an employer to investigate every aspect of an employee's condition before terminating him based on his inability to work. At the very least, however, an employee who proposed an accommodation while still on short-term leave—as Parker did here, at least two weeks prior to his termination—triggers a responsibility on the employer's part to investigate that request and determine its feasibility.[41]

Judge Sotomayor also addressed the issue of liability for mixed-motive actions in *Parker*. Following decisions in other circuits that applied the liability for mixed-motive actions used under Title VII of the Civil Rights Act[42] to the ADA, Judge Sotomayor applied Title VII's mixed motive analysis to the ADA.

In the earlier case of *Norville v. Staten Island University Hospital*,[43] Judge Sotomayor also examined the issue of reasonable accommodation in an employment discrimination context. *Norville* involved a nurse who suffered a spinal injury on the job, was on an extended leave of

[37] 50 F. Supp. 2d 262 (S.D.N.Y. 1999).

[38] *Id.* at 290.

[39] *Id.* at 289.

[40] 204 F.3d 326 (2d Cir. 2000).

[41] *Id.* at 338.

[42] 42 U.S.C. §2000e-2(m).

[43] 196 F.3d 89 (2d Cir. 1999).

absence, and then sought to return to work. Her previous job was no longer available, and the hospital offered her part-time work or full-time work at another site. Both of these offers would have had adverse effects on her pension. The plaintiff then applied for a full-time position but another candidate was hired. Judge Sotomayor examined the statutory requirements for reasonable accommodations, which include reassignment to a vacant position; noted the Equal Employment Opportunity Commission (EEOC) guidelines stating that the new position should be equivalent; and concluded that "where a comparable position is vacant and the disabled employee is qualified for the position, an employer's refusal to reassign the employee to that position—absent some other offer of reasonable accommodation—constitutes a violation of the ADA."[44] Applying this analysis to *Norville,* Judge Sotomayor found that the trial court instructions to the jury were inadequate since they did not specify that the offer of an inferior position was not a reasonable accommodation when a comparable position is available. The instructions were found to be prejudicial to the plaintiff, and the case was remanded for further proceedings.

In two fact-specific decisions regarding the application of the ADA's statute of limitations, Judge Sotomayor arrived at two different rulings. In *Lloret v. Lockwood Greene Engineers, Inc.*,[45] Judge Sotomayor held that the ADA's statute of limitations for bringing an employment discrimination suit was applicable and that the plaintiff had not presented sufficient evidence regarding a mental disability to warrant the tolling of the statute of limitations. However, in *Brown v. Parkchester South Condominiums*,[46]another case alleging employment discrimination under the ADA, Judge Sotomayor found that there was sufficient documentation to warrant an evidentiary hearing to determine whether the plaintiff's medical conditions warranted tolling the applicable filing deadline.

Title II—Public Services

Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.[47] "Public entity" is defined as state and local governments, any department or other instrumentality of a state or local government, and certain transportation authorities.

In *Anthony v. City of New York*,[48] police responded to a 911 call and found Myra Anthony, an adult woman with Down Syndrome, alone. Since they were unable to locate her caretaker, the police transported the woman to the psychiatric ward of a hospital where she was detained overnight. Ms. Anthony sued alleging in part a violation of Title II of the ADA. Although Judge Sotomayor noted that there might be a Title II ADA claim if the seizure and hospitalization were motivated by discrimination against individuals with disabilities, she found no evidence of such motivation. The district court's grant of summary judgment for the city on the ADA claim was affirmed.

[44] *Id.* at 99.

[45] 1998 U.S. Dist. LEXIS 3999 (SDNY 1998).

[46] 287 F.3d 58 (2d Cir. 2002).

[47] 42 U.S.C. §§12131-12133.

[48] 339 F.3d 129 (2d Cir. 2003).

Judge Sotomayor also found no violation of Title II of the ADA in *Lai v. New York City Government*[49] where she joined in a *per curiam* decision. In *Lai*, the plaintiff argued that a city policy giving special parking privileges to individuals with disabilities who lived, worked, or attended school in the city but did not give the same rights to individuals with out-of-state disabilities permits was violative of the ADA. The *per curiam* decision found that the city's policy "discriminates on the basis of residency and not disability" and, therefore, did not run afoul of Title II of the ADA.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified individual with a disability, solely on the basis of the disability, in any program or activity that receives federal financial assistance, the executive agencies, or the U.S. Postal Service.[50] Many of the concepts used in the ADA originated in Section 504 and its interpretations; however, there is one major difference. While Section 504's prohibition against discrimination is tied to the receipt of federal financial assistance, the ADA also covers entities not receiving such funds. In addition, the federal executive agencies and the U.S. Postal Service are covered under Section 504, not the ADA.

In *Pell v. Columbia University*,[51] Judge Sotomayor examined a claim involving, among other issues, questions about an harassment on the basis of disability claim under Section 504, and about a lack of accommodation regarding a foreign language requirement. Judge Sotomayor held that the allegations of hostility to the plaintiff's dyslexia were "more than adequate to warrant denying Columbia's motion to dismiss." However, Judge Sotomayor granted Columbia University's motion to dismiss regarding the alleged discrimination on the foreign language requirement, finding that the plaintiff failed to make a showing that she was discriminated against since Columbia accepted her transfer credits in French as fulfilling their requirements.

Protection and Advocacy for Individuals with Mental Illness Act (PAIMI)

PAIMI was enacted to ensure that "the rights of individuals with mental illness are protected" and "to assist States to establish and operate a protection and advocacy system for individuals with mental illness."[52] The protection and advocacy systems (P & A's) are to "protect and advocate the rights of such individuals" and "investigate incidents of abuse and neglect."[53] Federal funds are provided to states that meet the requirements of the act,[54] and these requirements include having access to patient records.[55] Judge Sotomayor's decisions have been supportive of the purposes of

[49] 163 F.3d 729 (2d Cir. 1998).

[50] 29 U.S.C. §794.

[51] 1998 U.S.Dist. LEXIS 407 (S.D.N.Y. Jan. 21, 1998).

[52] 42 U.S.C. §10801(b).

[53] *Id.*

[54] 42 U.S.C. §10803.

[55] 42 U.S.C. §10805.

PAIMI and other federal statutes relating to P & A systems, and her opinions have not supported limitations on their authority to investigate complaints.

In *Protection & Advocacy for Persons with Disabilities v. Mental Health & Addiction Services*,[56] the Connecticut P & A system sued for access to peer review records on two patients who had died while institutionalized. Joining the Third and Tenth Circuits, Judge Sotomayor held the statutory language was clear in its requirement for disclosure of "all records."

Similarly, in *Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Hartford Board of Education*,[57] Judge Sotomayor addressed whether the Connecticut P & A system should have access to a nonresidential school for children with serious emotional disturbances in order to investigate allegations of abuse and neglect. The main issue was whether the nonresidential nature of the program limited the rights of the P & A system to investigate. Finding that the P & A system had such rights, Judge Sotomayor relied upon recent amendments to PAIMI which specifically extended the statute's reach to individuals living in the community. In addition, she found that the Developmental Disabilities Assistance and Bill of Rights Act (DD Act)[58] and the Protection and Advocacy for Individual Rights Act (PAIR)[59] also supported the right of a P & A to have access to the school. In arriving at this holding, Judge Sotomayor examined the purposes of the DD Act to protect the legal and human rights of individuals with developmental disabilities and found that these purposes were not limited by the fact that a section of the DD Act specifically provides authority to investigate certain incidents.

The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA)[60] is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.[61] Judge Sotomayor has written several IDEA decisions while serving on the Second Circuit. One commentator found that in decisions involving IDEA before the Second Circuit, Judge Sotomayor ruled in favor of school districts 58% of the time.[62]

[56] 448 F.3d 119 (2d Cir. 2006).

[57] 464 F.3d 229 (2d Cir. 2006).

[58] 42 U.S.C. §15001 et seq.

[59] 29 U.S.C. §794(e).

[60] 20 U.S.C. §1400 et seq. For a detailed discussion of IDEA as amended by the 2004 reauthorization, see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by (name re dacted) and (name redacted).

[61] For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142, see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by (name redacted).

[62] Erik W. Robelen, "School Ruling by Sotomayor Eyed," EDUCATION WEEK (June 5, 2009), http://www.edweek.org/ew/articles/2009/06/10/33sotomayor-2.h28.html?tkn=PXZFVopNh%2BllvMFiMtnJ1S6WDo5b9VocboEX&print=1, quoting Perry A. Zirkel, Professor of Education and Law at Lehigh University.

Her decisions, as illustrated by *Taylor v. Vermont Department of Education et al.*,[63] rely upon the statute, judicial interpretations, and Department of Education interpretations to inform her reasoning.

In *Taylor v. Vermont Department of Education et al.*,[64] Judge Sotomayor analyzed the rights under IDEA of a natural parent who does not have custody of the child. IDEA states that the term "parent" "*includes* a legal guardian,"[65] and the regulations more comprehensively define the term.[66] In this case, Pam Taylor, the natural mother of L.D., was not awarded any parental rights of L.D. in her final custody arrangement as part of her Vermont divorce decree. Beginning in fall 1998, L.D. was assessed and evaluated multiple times for emotional-behavioral disabilities, and Taylor, claiming a right as a "parent" under IDEA, sought access to records of these evaluations and increased involvement in decisions made about her daughter's special education. Following several unsuccessful attempts to pursue her rights under IDEA administratively, Taylor filed suit with the district court.[67] The case was dismissed because the court held that Taylor lacked standing as a non-custodial parent, and Taylor appealed the decision. On appeal, Judge Sotomayor, in analyzing IDEA, its respective regulations, and case law, recognized the Department of Education's decision that "the allocation of parental rights under the IDEA is best left to local domestic law."[68] As a result, she analyzed Taylor's rights under the Vermont divorce decree and held that, because Taylor had no "authority to make education decisions on behalf of L.D." in her Vermont divorce decree, Taylor therefore lacked standing to demand a hearing under IDEA.[69] However, Judge Sotomayor found that Taylor could pursue her record-access claim under the IDEA "[b]ecause the custody decree has not 'specifically revoked' her informational access prerogatives."[70]

In *Murphy v. Arlington Central School District Board of Education*,[71] Judge Sotomayor examined a claim involving the "stay put" provision of IDEA.[72] The "stay put" provision guarantees that, during the pendency of administrative proceedings, "unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.... "[73] In this case, the Murphys, parents of a child with a disability as defined by

[63] 313 F.3d 768 (2d Cir. 2002).

[64] *Id.*

[65] 20 U.S.C. §1401(19)(A) (emphasis added).

[66] 34 C.F.R. §300.20.

[67] Taylor filed suit under IDEA and the Family Educational Rights and Privacy Act (FERPA). A discussion of the FERPA aspects of this case is beyond the scope of this report.

[68] 313 F.3d at 780.

[69] *Id.* at 782.

[70] *Id.* at 786.

[71] 297 F.3d 195 (2d Cir. 2002). Subsequent costs and fees proceedings in this case eventually reached the Supreme Court (*see* Arlington Central School District Board of Education v. Murphy, 548 U.S. 291), but the Supreme Court's decision did not involve issues decided by Judge Sotomayor's opinion.

[72] 20 U.S.C. §1415(j).

[73] *Id.* In enacting P.L. 94-142, the original version of IDEA, Congress provided grants to the states to help pay for education for children with disabilities, and also delineated specific requirements the states must follow to receive these federal funds. This public law contained a requirement that if there is a dispute between the school and the parents of a child with a disability, the child "stays put" in his or her current educational placement until the dispute is resolved using the due process procedures set forth in the statute. The concept of "stay put" was placed in the statute to help eliminate the then common discriminatory practice of expelling children with disabilities from school. A revised "stay put" provision remains as law in the current version of IDEA.

IDEA, petitioned the district court for an injunction requiring the Arlington school board to pay for their son Joseph's education at a private school while administrative proceedings were pending. The district court held that Joseph's private school was his "current educational placement" and therefore, under IDEA's stay put provision, "Arlington was obligated to pay for Joseph's schooling until such time as Joseph's placement was changed in accordance with the IDEA."[74] On appeal, Judge Sotomayor affirmed the district court's ruling on both procedural and substantive grounds. First, she held that the district court properly exercised jurisdiction over the claim even though the Murphys had not fully exhausted all of their administrative remedies because "access to immediate interim relief is essential for the vindication of this particular IDEA right [the "stay put" guarantee in § 1415(j)]."[75] With respect to the substantive issues, Judge Sotomayor relied on an intervening Second Circuit decision with a nearly identical fact pattern[76] and held that "Arlington is financially responsible for Joseph's tuition until such time as ... [his] placement is changed in accordance with the terms of the IDEA."[77] Finally, Judge Sotomayor found that the Murphys' *pro se* appearance at the district court was not reversible error, even though the Second Circuit does not permit non-attorney parents to represent their children.[78]

Finally, in *Mr. L. ex. rel. M. v. Sloan and Norwalk Board of Education*,[79] Judge Sotomayor addressed whether a party who prevailed in a purely private settlement agreement was entitled to attorneys' fees. IDEA allows a district court, in its discretion, to award attorneys' fees "to a prevailing party who is the parent of a child with a disability."[80] In this case, following a series of special education due process hearings, Mr. L., on behalf of his child M., and the Norwalk Board of Education reached a private settlement agreement concerning M.'s placement, and the hearing officer dismissed the case without approving the settlement or incorporating it into the order of dismissal. Mr. L., who had been the defendant in the due process hearings, then filed suit with the district court, arguing that he was a "prevailing party" and therefore entitled to recover attorneys' fees under IDEA. The district court held that Mr. L. was not a "prevailing party" and granted summary judgment to the school board. In her decision, Judge Sotomayor held that the decision in *Buckhannon Board and Care Home, Inc., v. West Virginia Department of Human Resources*,[81] which found that a "prevailing party" is one who achieves a judicially sanctioned change in the legal relationship of the parties,[82] applied "regardless of whether the party seeking fees is a plaintiff or a defendant" and therefore applied to this case.[83] She further held that the parties' settlement did not satisfy the *Buckhannon* requirement because it "was purely private and therefore does not constitute an administratively sanctioned change in the legal relationship of the parties that is judicially enforceable."[84] As a result Judge Sotomayor upheld the lower court's decision.

[74] 297 F.3d at 197.

[75] *Id.* at 200.

[76] Board of Education v. Schutz, 290 F.3d 476 (2d Cir. 2002).

[77] 297 F.3d at 201.

[78] *Id.* at 201.

[79] 449 F.3d 405 (2d Cir. 2006).

[80] 20 U.S.C. §1415(i)(3)(B)(i)(I).

[81] 532 U.S. 598 (2001).

[82] For more information about the *Buckhannon* decision, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by (name redacted).

[83] 449 F.3d at 407.

[84] *Id.* at 408.

In addition to these written opinions, Judge Sotomayor joined in a unanimous ruling by the Second Circuit in *Board of Education of the Hyde Park Central School District v. Frank G.*[85] that held the family of a child with a disability could be reimbursed for private school tuition even if the child had never received services from the school district. This holding was later reached by the Supreme Court in a different case, *Forest Grove School District v. T.A.*[86] On June 22, 2009, the court held that IDEA authorized reimbursement for private special education services when a public school fails to provide FAPE and the private school placement is appropriate, regardless of whether the child previously received special education services through the public school. Prior to this decision, the court, dividing 4-4, in *Board of Education of the City School District of the City of New York v. Tom F.*[87] upheld a Second Circuit ruling on private school reimbursement. The court of appeals had held that parents of a child with a disability are entitled to private school reimbursement even though the student had never received special education services from the school district. However, the Court's *per curiam* decision was not precedent for lower courts, and the issue about whether reimbursement for private school tuition may be made when the child has not received public special education services was not settled by the Supreme Court until the *Forest Grove* decision.

Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

[85] 459 F.3d 356 (2d Cir. 2006), *cert. den.,*128 S. Ct. 436, 169 L. Ed. 2d 325, 2007 U.S. LEXIS 11520, 76 U.S.L.W. 3199 (U.S. 2007).

[86] 557 U.S. __ (2009), *aff'd* 523 F.3d 1078 (9th Cir. 2008).

[87] 552 U.S. 1 (2007), 128 S.Ct. 1, 199 L.Ed.2d 1 (2007).