

MARKETPLACE

LAW

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A Prep School Faces Lawsuit Over Disability

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It may take a court order for Nicholas Axelrod Panagopoulos to graduate from high school this spring.

Mr. Panagopoulos, who has been diagnosed with attention deficit/hyperactivity disorder, is suing Phillips Academy in Andover, Mass., for discrimination. He claims the prestigious prep school kicked him out in December because the faculty thought he wasn't trying hard enough to complete assignments on time.

Mr. Panagopoulos's case, which is set to go to trial in Boston today, illustrates the tension between the needs of learning-disabled students and the difficulties some educational institutions say they face in accommodating such students without compromising academic standards. It also highlights the way institutions may greet some claims of learning disability with skepticism.

Last month, U.S. District Judge Edward F. Harrington ordered Mr. Panagopoulos, who is 18 years old, reinstated as a student in good standing pending the trial's outcome. In addition to reinstatement, Mr. Panagopoulos is seeking compensatory and punitive damages as well as a court order that his high-school transcript be forwarded to colleges without the information that he was forced to withdraw.

A spokeswoman for Phillips Academy denies the school discriminated against Mr. Panagopoulos. "We made all the accommodations requested by the student, and we have a practice of doing that with disabilities," she says.

Mr. Panagopoulos scored a 1410 on the Scholastic Aptitude Test, out of a possible 1600, and was a National Merit Scholarship finalist, without receiving any accommodations. Indeed, his high scores prompted the school to question, in its court papers, whether Mr. Panagopoulos's attention-

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deficit disorder substantially impaired his learning abilities.

Mr. Panagopoulos's own filings state that his learning problems were diagnosed when he was three and that he first took medication to help when he was five.

Marc Redlich, the Boston lawyer representing Mr. Panagopoulos, says that in August 1997, as he was about to enter 11th grade, his doctor sent school administrators a letter describing his disability. The letter said the student was on medication and was spending an hour a week in therapy. The school didn't tell the faculty the specific nature of Mr. Panagopoulos's disability or its symptoms, Mr. Redlich says. "This shows how one of these select, upper-crust institutions think and work," he adds. "Despite the lip service, it's very much sink or swim."

Schools, even private ones, are obligated under the federal Americans with Disabilities Act to provide accommodations to disabled students. Larry Paradis, executive director of Disability Rights Advocates, a nonprofit legal center in Oakland, Calif., says schools resist fully accommodating those with learning disabilities. "There's still a lot of bias against kids with learning disabilities or attention-deficit disorder," he says. "People just assume they're stupid or lazy. And that's not true."

Two years ago, Boston University was ordered by a federal judge in Boston to pay \$30,000 in damages to six learning-disabled students. They sued after the university instituted a policy requiring them to be tested anew for disabilities and denying them the right to substitute other courses for the mandatory foreign-language course. (Last May, the same judge said the school could have a foreign-language requirement.)

In its court papers, Phillips Academy raises the question of whether attention-deficit/hyperactivity disorder is considered a disability under the ADA. The school also says Mr. Panagopoulos was never clear about what accommodations he needed and that it tried to accommodate him by, among other things, giving him extra time on some tests.

After taking Latin and Spanish in his first two years, Mr. Panagopoulos was allowed to study language structure instead of taking a third year of foreign language. The school also permitted him to type his papers and exams on a computer because

of his poor handwriting.

But accommodation had its limits. "Allowing a student to pick and choose only the portions of a syllabus he finds interesting enough to read, and hand in written assignments (or not) when it suits him, would fundamentally alter, not to mention lower, the Academy's stringent academic requirements, which are designed to prepare students for admission to highly selective colleges," the school said in court papers.

To help Mr. Panagopoulos concentrate on his studies, the school told him to remove his stereo, telephone and computer games from his dorm room. He refused, explaining that other students had the same equipment and that he needed a computer to bring to class to take notes. He says he needed the phone for the computer's modem. He adds that he observed a curfew the school imposed on him.

Still, he maintained only a C average after making up four classes that he initially flunked in his first three years at the school, which runs from grades nine through 12.

His parents declined the school's requests to withdraw him after each of his first three years, and Mr. Panagopoulos began his senior year with a warning that if he flunked one course, had excessive unexcused absences or received a U for unsatisfactory effort, he would be expelled, Mr. Redlich says.

Things came to a head last fall in Mr. Panagopoulos's religious-philosophy class. Mr. Panagopoulos said in an affidavit that Diane Moore, his teacher for the class, turned down his requests for a written syllabus and more time to finish assignments. When she realized he wasn't keeping up with his reading assignments, she tried to push him to keep up by telling him to turn in outlines of what he read, he said.

The class paper proved to be Mr. Panagopoulos's downfall. He failed to turn in a revised bibliography and his first draft of the paper on time, according to an account in a pretrial opinion by Judge Harrington. Ms. Moore then threatened to give him a U if he didn't hand in an outline of his paper two days later.

Mr. Panagopoulos told Ms. Moore that he had a learning disability and that he would be expelled if he received a U, according to the judge's opinion. She told him that she wasn't aware of the limitations caused by his disorder. In an interview,

Mr. Panagopoulos says her response was: "Someone has to be the last straw, and I have to be the straw." Ms. Moore didn't return telephone calls seeking comment.

In the end, Mr. Panagopoulos received a poor but passing grade in the course. But Ms. Moore also gave him a U.

The faculty voted 168 to 2 to require Mr. Panagopoulos to withdraw, despite another note from his doctor and the pleas of his mother, who says she has paid the school more than \$90,000 in tuition and fees for her son's Phillips Academy education.