



## **The Intersection of Student Conduct, ADA, and Direct Threat: Institution Wins on All Claims**

*Castelino v. Rose-Hulman Inst. of Tech.*, No. 2:17-CV-139-WTL-MJD, 2019 WL 367623 (S.D. Ind. Jan. 30, 2019). ([case](#))

### *Introduction:*

The facts of this case present a common dilemma for higher education at the intersection of student misconduct, student mental health concerns, behavioral outbursts, and readmission decisions. Rose-Hulman Institute of Technology has been embroiled in a prolonged and contentious lawsuit that exposes all of these tensions.

This case is worthy of our attention for several reasons. First, it demonstrates an institution's effectiveness in following its published procedures for addressing misconduct and the standard protocol for readmission following suspension of a student, even when the student had disability accommodations that were at the crux of the underlying conduct process. Second, this case highlights that minor deviations in processes are not typically enough to be considered discriminatory. Instead, a plaintiff needs to demonstrate that the alleged discrimination is based on the disability (a "but for" standard). Why cover this case in Campuses and the Courts? Sure, there are plenty of cases that uphold college discipline because the institution followed its policies and procedures, but it is fairly rare for a case involving disability and direct threat to make it to trial, and your Editors think the judge's discussion of why the direct threat defense wasn't applicable here is important to understand.

### *Facts and Background:*

Justin Castelino enrolled as a transfer student at Rose-Hulman Institute of Technology. His documented disability affects his learning, reading, concentrating, and communicating. He requested and received accommodations: specifically, extended time on in-class tests and use of a distraction-free testing environment. In at least one incident, a faculty member required him to take an exam in a regular classroom rather than the distraction-free space.

During his tenure as a student, there was documentation of many complaints about his behavior, including numerous incidents where he was alleged to have yelled and cursed at faculty and staff. On two occasions, prior to the incident that gave rise to this lawsuit, faculty alleged academic misconduct by Castelino. First, a faculty member observed him copying from a peer on a homework assignment. The Rules and Discipline Committee upheld the sanction,

which was a zero on the assignment and the placement of a letter into his file describing the academic misconduct. Next, a different faculty member reported that he submitted work identical to another student's work. That faculty member documented the violation in writing, as well, and reminded him that further incidents of academic misconduct could result in harsher penalties.

Castelino re-enrolled in a course that he had dropped during the prior academic year. In the prior year, the faculty member had permitted students to use a typed note sheet for exams; however, the faculty member now required handwritten note sheets because students had been copying and pasting course slides into their note sheets. Castelino asked for an exception to the handwritten requirement because he wanted to use the typed version he had already prepared. He ultimately was permitted to use his typed version; however, the faculty member discovered that the sheet contained at least 26 copied and pasted course slides, despite Castelino's earlier assertions that none of his content was copied and pasted. The faculty member considered Castelino's use of the note sheet to be academic misconduct and assigned a zero on the exam.

Because this was his third case of academic misconduct, the matter was referred to the Rules and Discipline Committee for consideration of additional sanctions. As the result of his behavioral outbursts leading up to the hearing, the faculty chair feared that he might become violent at the hearing and requested campus security to be present. Members of his academic department had grown so concerned about his behavior that they had created a code word to use with public safety. The committee found him responsible for repeated acts of academic dishonesty and suspended him for one quarter. The full faculty ultimately upheld his sanction on appeal. During the appeal process he continued to demonstrate disturbing behavior; in a meeting with the Institute President he became angry and began yelling. After being asked repeatedly to calm down, he was ultimately asked to leave the President's Office.

Castelino requested readmission for the winter quarter but was denied because he did not have a clear plan for completing his coursework and the committee did not believe there was any specific academic benefit to his returning in the spring rather than waiting for the fall semester. Shortly thereafter, Rose-Hulman learned of criminal allegations for off-campus conduct during Castelino's suspension. He had been arrested for breach of peace, and cultivating, possessing, and selling marijuana and hallucinogens. The news coverage of the incident also described allegations that he was seen attempting to strangle a woman.

Rose-Hulman then obtained records regarding his criminal history and learned that prior to his enrollment he had plead guilty in several criminal matters: forgery, property damage/injury, and DUI. He had served a total of six months in jail. When he sought readmission for fall, the committee inquired about the criminal incidents. The President expressed his concern that he

presented a safety risk. The committee ultimately denied his readmission and he was informed that he could not reapply in the future. Thus, his suspension amounted to constructive expulsion.

Castelino sued Rose-Hulman, alleging that he was discriminated against under the Americans with Disabilities Act.<sup>1</sup> Both parties moved for summary judgment, which is a common device in civil litigation that allows a judge to decide the lawsuit in favor of either the plaintiff or defendant after all parties have had the benefit of reviewing all the available evidence in the case. Summary judgment motions occur before a trial is scheduled and are incredibly common in civil litigation, although most higher education cases do not proceed past the stage of the motion of dismiss, which usually occurs prior to summary judgment.

*The Court's Analysis:*

Castelino argued that Rose-Hulman discriminated against him by failing to properly accommodate his disability. "Discrimination" is specifically defined in the ADA to include "a failure to make reasonable modifications in policies, practices, or procedures ... when such modifications are necessary ... unless the [institution] can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations."<sup>2</sup> Castelino alleged several instances where he believed faculty members failed to accommodate him.

The court ignored the initial "deprivation" of the distraction-free environment claim, as that claim was beyond the statute of limitations.<sup>3</sup> Similarly, concerns raised about his initial intake process by the Disability Services Office were beyond the statute of limitations. The thrust of Castelino's remaining discrimination claims rested on how Rose-Hulman handled the "note sheet incident" and the readmission decisions. In the court's view, Castelino failed to articulate why he was entitled to use a note sheet with copied and pasted material as a reasonable accommodation; "in other words, he fails to explain how his disability impacted his ability to create a new note sheet that did not contain material that had been cut and pasted."<sup>4</sup>

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<sup>1</sup> Castelino included many other claims in his lawsuit that we do not describe in depth here, including breach of contract, defamation, false advertising, invasion of privacy, harassment, and malice. All of these claims arise under Indiana law.

<sup>2</sup> 42 U.S.C. § 12181(2)(A)(ii). Note that because Rose-Hulman is a private institution, it is covered by Title III of the Americans with Disabilities Act, which prohibits discrimination in places of "public accommodation." Readers should note that public institutions are typically governed by Title II of the ADA; however, the analysis is often quite similar among public and private institutions.

<sup>3</sup> The statute of limitations for ADA claims typically is determined by looking at the statute of limitations for personal injury claims in the relevant state law. Indiana has a two-year statute of limitations for "injuries to person or character." See Ind. Code § 34-11-2-4(a)(1).

<sup>4</sup> *Castelino*, 2019 WL 367623, at \*9.

In reviewing Rose-Hulman’s decision-making on readmission, the court again emphasized the nexus to Castelino’s disability. The court wrote,

Castelino fails to articulate how the standards and criteria used by Rose-Hulman or any of the procedural irregularities that he alleges occurred had the effect of discriminating against Castelino *on the basis of his disability*. It is not enough to say incorrect procedures were used; to constitute discrimination under the ADA, those incorrect procedures had to be used because of Castelino’s disability.<sup>5</sup>

Barring that, Castelino would need to show that the allegedly incorrect procedures adversely affected him in a way that would not have affected a person without a disability. However, the court found that Castelino failed to prove his argument. The court further noted that “Rose-Hulman [was] permitted to consider Castelino’s past behavior when determining whether to readmit him, even if that past behavior may have been caused, in whole or in part, by Castelino’s disability.”<sup>6</sup>

Ultimately, the Court concluded that Castelino had not met his evidentiary burden, meaning that a “reasonable jury” could not find in his favor on any of his claims under the ADA. Accordingly, the court granted summary judgment for Rose-Hulman.<sup>7</sup>

#### *Next Steps For the Court:*

Interestingly, Rose-Hulman countersued Castelino, alleging defamation and abuse of process, stemming largely from the contentious tenor of the litigation. Those claims still need to be resolved by the federal district court. Castelino has appealed this decision to the 7th Circuit, which is the Court of Appeals in the federal system for cases in Indiana.

#### *Takeaways and Lessons for Readers of Campuses and the Courts:*

- Cases of student misconduct with underlying disability accommodations can be complex and intimidating for students, staff, and faculty alike. Rose-Hulman did an effective job here of continuing to use its regular processes, such as for responding to the academic misconduct, or the readmission process, without getting unduly distracted by the underlying disability.
- Remember that taking otherwise valid action involving a student (or staff member) with a disability is not discrimination in and of itself. Adverse action is discriminatory only if it is discriminatory *in intent*<sup>8</sup> or has a discriminatory impact.

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<sup>5</sup> *Id.* at \*10 (emphasis in the original).

<sup>6</sup> *Id.* at \*12.

<sup>7</sup> The court granted summary judgment in Rose-Hulman’s favor on all the claims against the institution.

<sup>8</sup> Such as if Rose-Hulman had singled out Castelino for discipline because of his disability.

- Thoughtful and careful attention is required when taking disciplinary action when a “threat” is posed to the community. Here, the court upheld the institution’s revocation of possible readmission on the basis of Castelino’s past actual threats made to members of the campus community. However, note that a decision to separate a student on the basis that they “pose a threat to the community” — for *prospective* behavior (being a potential threat) rather than past misconduct (having made an actual threat) — must be made according to the “direct threat” test under federal ADA regulations. Specifically, an institution:

must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.<sup>9</sup>

The difference, in this court’s view — and following analogous precedent in employment settings — turns on whether you are disciplining for past threatening *conduct*, even if the underlying disability caused the behavior.<sup>10</sup> In that case, a direct threat determination is not required, according to this court. On appeal, it will be interesting to see whether Rose-Hulman is scrutinized for not making the decision contemporaneously with the threats — rather than waiting until after he sought readmission several semesters later.

- Although due process protections do not formally apply to a private institution, Rose-Hulman wisely invited Castelino to provide his side of the story on the criminal incidents that occurred prior to his enrollment and during his suspension. This simple and straightforward “opportunity to be heard” comports with best practices in due process protections.

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<sup>9</sup> 28 C.F.R. §36.208.

<sup>10</sup> Note that just as with Title IX enforcement, courts and the Office for Civil Rights (OCR) can differ in how they evaluate and apply these standards. OCR or the Department of Justice (DOJ) may not make the same distinction that the court makes here between actual (past) and prospective (potential) threats. In administrative processes, OCR and DOJ may expect a “direct threat” analysis even with respect to suspensions/expulsions based on past threatening conduct, as they seem to have done so in prior complaint determinations.