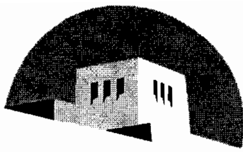

The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

DISABILITIES LAW
Semester II, 2004

Final Examination
UNM School of Law

Professor Marsha Baum
Thursday, May 7, 2004
9::00 a.m. to 12:00 noon

INSTRUCTIONS
(Three Hours)

This is a three-hour examination. There are three questions worth a total of 300 points. The first question is worth 150 points, the second is worth 100 points and the last is worth 50 points. You should allocate your time based on the point value per question.

Note that, for each question, you perform a particular role (associate in a law firm, law clerk, or attorney) and that you are asked to draft a particular type of document for a particular audience. You will lose points if you do not provide a suitable document for the specified audience.

In your answers, you are to apply the law to the facts and to provide specific citations to and analysis of relevant provisions of the appropriate act(s) and relevant case law to demonstrate your reasoning and to support your conclusion. References to case names and code sections are sufficient as citation.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

Your answers are to be concise and directly applicable to the problems presented. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.

This exam is open-book. You may refer to any print materials including your casebook, statutory/casebook supplement, your class notes, your course outline, and the outline you prepared for question one. You may NOT use electronic databases or other research materials.

You are to return your exam questions with your answers.

1.Your firm's new client, Mr. Valdez, is a 54 year old man who was hired as an equipment operator in Albuquerque Public Schools (APS) Maintenance and Operations Department in 1974. Although Mr. Valdez was involved in a motorcycle accident in 1979 which essentially incapacitated his right arm, he returned to work after recovering from the accident and has worked continuously for APS since then.

An equipment operator's major duties and responsibilities generally involve landscaping and groundskeeping. In addition, APS has delegated to its equipment operators responsibility for supervising the on-site work of persons sentenced by the courts to perform community service. Community service program (hereinafter "CSP") supervision is considered light-duty since it does not involve the lifting, carrying, or operation of machinery associated with most other tasks performed by equipment operators. APS claims CSP supervision has historically been rotated among the equipment operators on a daily basis. Mr. Valdez, on the other hand, claims that CSP supervision has historically been delegated to one employee on a full-time basis during the week, and to rotating groups of four equipment operators on weekends.

According to APS, the condition of Mr. Valdez' right arm had deteriorated over the years to the extent that, in April 2002, Mr. Valdez complained that he was no longer able to perform many of the functions of an equipment operator. In response to Mr. Valdez' alleged complaints, APS claims it significantly increased his involvement as supervisor of the CSP to the exclusion of other employees who previously shared in this task. Mr. Valdez disputes this contention as well, and claims he never complained that he could not perform the functions of an equipment operator. Rather, Mr. Valdez asserts that a majority of the equipment operators did not want to work with the CSP, and consequently that APS asked him to assume responsibility for CSP supervision on a full time basis. Mr. Valdez performed in that capacity for approximately two years beginning in March 2002, and has received multiple letters of commendation for his CSP work.

In October 2003, APS obtained a Functional Capacities Evaluation of Mr. Valdez which indicated that he was able to perform work characterized as "light physical demand." However, the same evaluation indicated that the essential duties of an equipment operator included a number of tasks in the "heavy physical demand" category, which Mr. Valdez is unable to perform. Mr. Valdez claims APS subsequently informed him that he was being discharged from his job because of his disability.

As an alternative to discharge, APS allegedly offered Mr. Valdez a part-time position as an educational aide with annual wages of approximately $10,700 and no benefits. Although APS denies it informed Mr. Valdez he was being discharged because of his disability, it admits it offered him a part time job as an educational aide with annual wages in the $10,000-$11,000 range. Mr. Valdez had earned approximately $35,000 plus medical and other benefits as an equipment operator in 2003.

As clerk to the senior partner, you are to prepare a memo discussing all aspects of your client's possible cause(s) of action (including remedies) and the counterarguments to be made by APS. Your memo should identify all elements to be proven and specify who has the burden of proof for each element if the case should proceed to trial. Be sure you specify code sections, regulations and case law throughout and apply the law directly to your client's situation.

2.You are clerking for the U.S. Circuit Court of Appeals. Your assignment is to draft the opinion setting out the Circuit Court's ruling on the appeal of the district court decision in the following matter. Your draft must include references to and discussion of the appropriate code sections and case law supporting the court's ruling.

LaGrange School District No. 105 appeals the district court's decision finding that it failed to offer Ryan B. ("Ryan") a free appropriate public education and ordering reimbursement to Ryan's parents for the cost of his education in a private pre-school. Ryan was born on January 23, 1994 and has Down's Syndrome. In 1996, when he was two, his parents placed him in a private pre-school with nondisabled children. When he turned three, his home school district, LaGrange School District No. 105 ("School District"), was asked to evaluate him and determine his eligibility for special education programs pursuant to IDEA. The School District does not have a program for disabled students. The School District convened a multi-disciplinary conference ("MDC") and prepared the statutorily required individualized education program ("IEP"), which, in January 1997, concluded that Ryan was eligible for special education and recommended placing him in a program limited to disabled students at Brook Park Elementary School, five miles from his home and in a different school district.

In February 1997, Ryan's parents rejected the Brook Park placement and requested the creation of a program within the School District that would include nondisabled students or access to similar programs in neighboring districts. A second IEP meeting was held and Ryan's parents again rejected the Brook Park program. On March 19, 1997, the School District offered to have the IEP team consider a state-funded "At-Risk" program, called Project IDEAL, within Ryan's district. This program is available to children who are primarily at risk of academic failure. After Ryan's parents visited Project IDEAL, they requested a due process hearing as provided for in IDEA. There is no evidence that the School District ever evaluated the At-Risk program with reference to Ryan's IEP.

Under IDEA, disputes such as these are first handled administratively through a two-tiered process. The initial hearing is called the Level I Due Process Hearing. Appeal from that decision results in a second administrative hearing, the Level II. From there, a party may appeal to federal court. In this case, the Level I hearing officer found that Ryan's placement for the 1997-98 school year should have been in the Project IDEAL/At-Risk program. However, since this program was not offered to Ryan until March 19, 1997, the School District was ordered to pay the costs of Ryan's private pre-school from January until March 19, 1997. Both sides appealed the Level I decision-- Ryan's parents on the issue of placement in the At-Risk program and the School District on the limited issue of payment for the private school. The Level II hearing officer ruled that neither the Brook Park placement nor the At-Risk program provided Ryan with a FAPE because neither placement satisfied IDEA's requirement that disabled children be educated in the "least restrictive environment." The Level II officer also ordered the School District to pay for Ryan's private school.

The School District appealed. On cross motions for summary judgment, the district court ruled in Ryan's favor and held that the School District had failed to provide a FAPE and affirmed the award of private pre-school costs. The School District now appeals.

3.John Giebeler had worked as a psychiatric technician for approximately five years before becoming disabled by AIDS. At the time Giebeler had to leave work because of his disability, he was earning approximately $36,000 per year. Since 1996, Giebeler has supported himself through monthly disability benefits under the Social Security Disability Insurance (SSDI) program and housing assistance from the Housing Opportunities for People with AIDS program (HOPWA).

In May 1997, Giebeler sought to move from his two-bedroom apartment at the Elan at River Oaks complex (Elan) to an available one-bedroom unit at the Park Branham Apartments (Branham), a rental property owned by M & B Associates. Giebeler wanted to move to the Branham unit because the rent, $875 per month, was less expensive than the $1,545 per month rent at Elan, and the Branham unit was closer to his mother's home. At the time Giebeler inquired about the Branham unit, he was receiving $837 from SSDI per month, $300 to $400 per month in a HOPWA subsidy, and varied amounts of financial support from his mother. He had a record of consistent and prompt payment of rent during his six years of residency at Elan, and his credit record contained no negative notations.

Branham resident manager Jan Duffus informed Giebeler that he did not qualify for tenancy at Branham because he did not meet the minimum income requirements. Duffus stated that Branham required prospective tenants to have a minimum gross monthly income equaling three times the monthly rent. For the apartment Giebeler wished to rent, the minimum required income was $2,625 per month, an amount less than Giebeler had earned before he became ill.

After he was informed of his ineligibility, Giebeler asked his mother, Anne Giebeler, to assist him in renting the apartment. Anne Giebeler went to the Branham office the next day for the purpose of renting an apartment that would be occupied by her son. Like her son, Anne Giebeler had a credit record with no negative entries. Anne Giebeler had owned the same home for 27 years and had completely paid off her mortgage. The home was located less than a mile from Branham. Anne Giebeler's income was $3,770.26 per month.

Both John Giebeler and Anne Giebeler filled out application forms for the one-bedroom Branham apartment, indicating that John Giebeler would be the only resident. On his rental application, Giebeler listed his current gross income as $837 and his present occupation as "disabled." The Branham property manager rejected the applications on the basis that M & B considered Anne Giebeler a cosigner and has a policy against allowing co-signers on lease agreements. Branham management never checked Giebeler's references or his rental or credit history nor inquired into Anne Giebeler's financial qualifications or connections to the area. Nor did the Branham management ever ask Giebeler about any additional sources of income or discuss with him any alternatives to the minimum income requirement.

You represent M&B Associates. Draft a letter to your clients discussing any liability they might have and your recommendations for actions they should take.