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BRYANT V. INDEPENDENT SCHOOL DISTRICT No. 1-38, 334 F.3D 928 (10TH CIR. 2003)

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FACTS

Chase and Charles Bryant, two African-Americans, were students at Wynnewood Public Schools, part of the Independent School District No. I-38 of Garvin County, Oklahoma (School District).[1] The Bryants fought with Caucasian students at the school on February 8, 2000.[2] The School District had a "Fight Policy" that stated that the school would not tolerate fighting or physical attacks between students.[3] It also provided that a school would suspend for the remainder of the semester any student with two offenses in a semester.[4] The Bryants violated this policy twice during the spring 2000 semester and the School District suspended them.[5] The School District did not suspend the Caucasian students because this fight was their first violation of the policy that semester.[6]

As part of their complaint, the Bryants claimed that the School District contributed to or allowed a hostile educational environment prior to the February 8, 2000 fight.[7] The Bryants claimed that school officials allowed students to inscribe racially offensive slurs, swastikas, and the letters "KKK" on school furniture, as well as in notes placed in African-American students' lockers and notebooks.[8] The Bryants also alleged that atlthough the school dress code policy prohibited students from wearing offensive and disruptive clothing, Caucasian males often wore confederate flag t-shirts to school in violation of the policy.[9] The Bryants claimed that parents and students complained to the school about all of these racially offensive acts, but the school did nothing in response to the complaints.[10]

The Bryants brought this action in the District Court for the Western District of Oklahoma, seeking relief under Title VI of the Civil Rights Act of 1964 for violations of their civil rights.[11] The Bryants stated three claims for relief in the district court: 1) the School District intentionally discriminated against them on the basis of race; 2) the School District's Fight Policy, although neutral on its face, had a disparate impact on them because they

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1 Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 929 (10th Cir. 2003).
2 *Id.* at 930.
3 *Id.*
4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.* at 929.
8 *Id.* at 931.
9 *Id.*
10 *Id.*
11 *Id.* at 929.

were African-Americans; and 3) the School District created and contributed to a racially hostile environment before the February 8, 2000 fight.[12]

The district court granted summary judgment for the School District, finding that the Bryants failed to raise a genuine issue of material fact to support their allegation that the School District had intentionally discriminated against them on the basis of race.[13] In addition, the district court found that, based on the Supreme Court's decision in *Alexander v. Sandoval*,[14] no private right of action existed under Title VI to remedy unintentional discrimination.[15] Because the district court characterized the Bryants' claims of disparate impact and of contribution to the existence of a hostile educational environment as unintentional forms of discrimination, it determined that the Bryants had no private right of action to pursue those claims.[16] The Bryants appealed the decisions of the district court.[17]

HOLDING

The Court of Appeals for the Tenth Circuit held that a genuine issue of material fact existed as to whether the principal and administrators of the School District intentionally allowed, facilitated, and maintained a racially hostile educational environment.[18] The Tenth Circuit reinstated and remanded the Bryants' claim for reconsideration under the *Davis*[19] deliberate indifference test.[20] The court held that because the School District sufficiently demonstrated that it had no discriminatory intent or purpose in suspending the students, the district court correctly granted summary

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12 *Id.*

13 *Id.*

14 Alexander v. Sandoval, 532 U.S. 275 (2001) (holding that there is no private right of action to enforce disparate impact regulations promulgated under Title VI). In *Sandoval*, a driver's license applicant sued the Alabama Department of Public Safety, alleging that its policy of administering license examinations only in the English language violated federal regulations enacted under Title VI forbidding the use of methods that have the effect of discriminating. *Id.* at 278–79. The Supreme Court held that Congress intended to give individuals a private right of action to enforce section 601 of Title VI, which prohibits only intentional discrimination by groups that receive federal funds, *id.* at 280–81, but did not intend to provide individuals with a private right of action to enforce the regulations developed under section 602 to enforce section 601, *id.* at 293.

15 Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 929 (10th Cir. 2003).

16 *Id.*

17 *Id.*

18 *Id.* at 933.

19 *See* Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999) (stating that a Title IX private damages action could lie where a federal funding recipient acts with deliberate indifference to known acts of harassment within his or her control, where the recipient's response was clearly unreasonable in the circumstances, and where the harassment is so severe, pervasive, and objectively offensive as to bar the victim's access to an educational opportunity or benefit).

20 *Bryant*, 334 F.3d at 933–34.

judgment in favor of the School District on the issue of intentional discrimination.[21]

ANALYSIS

The Tenth Circuit first noted that it reviews a district court's grant of summary judgment *de novo*.[22] The court must look at the facts as originally presented and decide whether the record demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[23] If no genuine issue of material fact exists, the court must grant the moving party's motion.[24]

Next, the court analyzed the Bryants' first two claims: whether the district court appropriately granted summary judgment for the School District on the issue of intentional discrimination and whether Title VI gives the Bryants a private right of action for disparate impact claims.[25] Both claims arose from the fight and the subsequent suspension.[26] Because this was a "discharge" case,[27] the court applied the allocation of burdens of proof from *Texas Department of Community Affairs v. Burdine*[28] to determine whether the Bryants could survive the School District's motion for summary judgment.[29] Although *Burdine* involved a Title VII discriminatory treatment

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[21] *Id.* at 930.

[22] *Id.* at 929.

[23] FED. R. CIV. P. 56(e).

[24] *Id.*

[25] Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 929–30 (10th Cir. 2003).

[26] *Id.* at 929.

[27] *See id.* (indicating that a suspension from school is analogous to a Title VII discriminatory discharge from employment).

[28] Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981) (holding that a defendant in a Title VII case bears only the burden of explaining the nondiscriminatory reasons for its actions after a plaintiff establishes a prima facie case of employment discrimination). In *Burdine*, a female employee sued her former employer, alleging gender discrimination in violation of Title VII. *Id.* at 251. The Supreme Court explained the allocation of burdens in a Title VII case:

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination rejection.

Burdine, 450 U.S. at 252–53 (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973)). The Court held that after the plaintiff proves the prima facie case of discrimination, the employer bears only the burden of explaining, and not persuading the court by a preponderance of the evidence, the nondiscriminatory reasons for the challenged action. *See id.* at 254–57.

[29] *Bryant*, 334 F.3d at 930.

claim,[30] the *Bryant* court stated that it and other courts often use a Title VII proof-shifting model for Title VI burden allocations.[31]

In a Title VI discharge claim, the plaintiff bears the initial burden of proof.[32] The plaintiff must prove a prima facie case of discrimination by a preponderance of evidence.[33] If the plaintiff successfully proves his or her prima facie case, the burden of proof shifts to the defendant.[34] The defendant must present a valid, non-discriminatory reason for the discharge of the plaintiff.[35] If the court finds that the defendant has met this burden, the burden of proof shifts back to the plaintiff.[36] The plaintiff must then prove that the reasons the defendant offered were not its actual reasons for the discharge, but were a pretext to discriminate.[37] Although the burden of proof shifts, the plaintiff always bears the burden of persuading the court that the defendant intentionally discriminated against the plaintiff.[38]

The court determined that the Bryants' allegation that the School District suspended them but not the Caucasian students established a prima facie case of discrimination.[39] The School District then met its burden of proof by demonstrating that it had a legitimate reason for suspending the students because the School District's Fight Policy required that the school must suspend any student who violated the policy twice in a semester.[40] Both of the Bryants had violated the policy twice, but the Caucasian students had not.[41] Additionally, the School District proved that the school had consistently suspended students who violated the Fight Policy twice; it had suspended ten students under the policy, six of whom were Caucasians, and four, including the Bryants, who were African-Americans.[42] The court found that the Bryants raised no evidence in the record to indicate that the School District's reasons for the suspensions were pretextual.[43] As a result, the court affirmed the lower court's grant of summary judgment in favor of the School District on the intentional discrimination claim.[44]

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30 *Burdine*, 450 U.S. at 250.
31 Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 930 (10th Cir. 2003).
32 *Id.*
33 *Id.*
34 *Id.*
35 *Id.*
36 *Id.*
37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.*
44 *Id.*

The court next considered the Bryants' disparate impact claim.[45] The court held that the Bryants failed to prove that the School District's reasons for the suspension were a pretext for discrimination.[46] Because the court found an independent basis for summary judgment on the disparate impact claim, it chose not to address whether *Sandoval* foreclosed the Bryants' disparate impact claim.[47]

Finally, the court considered the Bryants' third issue on appeal: whether Title VI provides a private right of action or remedy for a racially hostile educational environment.[48] The court examined the language of sections 601 and 602 of Title VI in light of the Supreme Court's decision in *Sandoval*.[49] The court, relying on *Sandoval*, stated that the plain language of section 601 of Title VI prohibits only intentional discrimination based on race, color, or national origin by groups that receive federal funds.[50] Section 602 allows federal agencies to enforce section 601 by issuing rules and regulations that help achieve the purpose of the statute.[51] In *Sandoval*, the Supreme Court held that Congress intended to give individuals a private right of action to enforce section 601[52] but did not intend to provide individuals with a private right of action to enforce the rules or regulations developed under section 602.[53]

In light of *Sandoval*, the court determined that the true issue in the case was whether permitting a racially hostile environment is, or could ever be, an intentional act.[54] *Sandoval* would likely preclude disparate impact cases because those claims focus on neutral policies that have an *unintentional* discriminatory effect on particular persons.[55] If, however, hostile environment claims such as the Bryants' had an element of intent, Title VI would allow such claims.[56]

The court examined the facts that the Bryants alleged in support of their claim that the school officials intentionally created or contributed to a hostile environment or both.[57] On a motion for summary judgment, the court must take the facts as alleged by the non-moving party as true.[58] In addition,

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45 *Id.* at 929–30.

46 *Id.* at 930.

47 *Id.* at 930–31.

48 *Id.*

49 *Id.* at 931.

50 *Id. See also* Alexander v. Sandoval, 532 U.S. 275, 281 (2001) (stating that it is beyond dispute "that § 601 prohibits only intentional discrimination").

51 *Sandoval*, 532 U.S. at 288–89.

52 *Id.* at 280.

53 *Id.* at 293.

54 Bryant v. Indep. Sch. Dist. No. I-38, 334F.3d 928, 931 (2003).

55 *Id.* at 932 (emphasis added).

56 *Id.* at 932–33.

57 *Id.*

58 *Id.* at 933.

the court must interpret the facts and reasonable deductions in favor of the non-moving party.[59] The Bryants alleged that Caucasian male students in the school wore racially offensive clothing, displayed racially offensive messages and stickers on their vehicles, and wrote racially offensive words on school furniture and notes they gave to the Bryants.[60] The Bryants further alleged that the principal knew of the situation due to complaints by parents and students[61] but took no action to remedy the situation until after the February 8, 2000 fight.[62]

On such facts, the court determined that a jury could find that the principal's inaction implied intent.[63] The jury could then hold the principal liable for affirmatively choosing not to remedy the hostile environment and thereby choosing to maintain the environment.[64] The court stated that it would be irresponsible for a court to hold that maintaining a hostile environment could never be an intentional act because, by doing so, a court would allow school officials to ignore egregious student-on-student discrimination.[65] The court indicated that because school administrators play an active role in leading students and setting the standard for their behavior, courts should hold administrators to a standard of behavior higher than that of a mere bystander.[66] The court made clear that this ruling did not create an affirmative duty for school administrators to actively hunt for and uncover instances of discrimination in order to prevent liability under section 601.[67] Instead, the court held that if a parent or student makes the school administrator aware of severe instances of intentional discrimination and the administrator intentionally fails to remedy the situation, that administrator is potentially liable under section 601.[68]

On remand, the court instructed the district court to apply the *Davis v. Monroe County Board of Education*[69] test to the facts of the case.[70] In *Davis*, the Supreme Court held that under Title IX, a plaintiff has a private right of action for damages where school officials act with deliberate indifference to student-on-student harassment.[71] Although Title IX deals with intentional sexual discrimination, the *Bryant* court concluded that

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59 *Id.* at 931.
60 *Id.* at 932.
61 *Id.* at 932–33.
62 *Id.*
63 *Id.* at 933.
64 *Id.*
65 *Id.*
66 *Id.*
67 *Id.*
68 *Id.*
69 Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).
70 *Id.* at 633.
71 *Id.*

Congress based the language of Title IX on that of Title VI.[72] Thus, the *Davis* court's determination of what qualifies as intentional discrimination under Title IX is directly analogous to what qualifies as intentional discrimination under Title VI.[73] Under the *Davis* test, a plaintiff's claim will survive only where the administrator was deliberately indifferent to harassment of which he or she had actual knowledge, and the harassment was so "severe, pervasive, and objectively offensive" that it can be said to have effectively barred the victim of the right to use or benefit from the educational opportunities provided by the school.[74]

CONCURRING OPINION

Chief Judge Tacha wrote a separate concurrence to assert that the district court erred in applying *Sandoval* to the Bryants' theory of liability and to emphasize that the *Davis* test creates a narrow and heavily qualified range of facts which could support a finding of liability under the deliberate indifference theory. First, Judge Tacha asserted that the district court incorrectly applied *Sandoval* to the Bryants' theory of liability because it they based it on criteria from a regulation created under the power granted by section 602.[75] According to Judge Tacha, the *Sandoval* Court held only that section 601 determines the boundaries of the existence of a private right of action.[76] Even under *Sandoval*, therefore, it is possible that language in a regulation developed pursuant to the power of section 602 may invoke the private right of action created by section 601.[77] Thus, the district court erred in reasoning that because the plaintiffs relied on a regulation created under section 602, the court had to grant summary judgment for the defendants.[78]

Second, Judge Tacha warned that because the *Davis* test is extensively qualified and allows for only a narrow set of facts that can support liability, the district court should exercise careful in its applying *Davis* to the facts of the instant case.[79] Judge Tacha stated that the district court should apply the *Davis* test to this case by first asking whether student-on-student conduct at the Bryants' school established a racially hostile educational environment.[80] Second, the district court should determine

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72 Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 934 (10th Cir. 2003).

73 *Id.*

74 *Davis*, 526 U.S. at 633; *see also* Murrell v. Sch. Dist. No. 1, Denver, Colo., 186 F.3d 1238 (10th Cir. 1999) (applying the *Davis* test in a Title IV deliberate indifference claim).

75 *Bryant*, 334 F.3d at 934–35.

76 *Id.*

77 *Id.* at 936.

78 *Id.* at 935–36.

79 *Id.* at 935, 938.

80 *Id.* at 937.

whether the School District acted deliberately indifferent to this environment or conduct.[81] Judge Tacha also made clear that the deliberate indifference standard is higher than the "reasonableness" standard.[82] To avoid liability under the *Davis* test, the School District must merely have responded to the peer harassment in a manner that was not clearly unreasonable in light of the known situation.[83]

CONCLUSION

In this case, the Tenth Circuit held that creation or maintenance of a racially hostile educational environment could be an intentional act.[84] This designation puts the claim of a racially hostile environment within the types of intentional discrimination claims for which section 601 of Title VI provides a remedy and demonstrates an expansion of the deliberate indifference theory. Previously, courts within the Tenth Circuit had extended the deliberate indifference theory of recovery only to Title IX cases,[85] allowing plaintiffs to recover damages if an authority figure had actual knowledge of and was deliberately indifferent to a sexually hostile or discriminatory environment.[86] By expanding the range of possible theories of recovery, the *Bryant* ruling should create more findings of liability under Title VI within the Tenth Circuit, despite the narrowness of the *Davis* deliberate indifference standard.

The impact of this decision could also influence other circuits' decisions on hostile environment claims based on race discrimination. Following the decision of the Supreme Court in *Davis*, most circuits have extended the deliberate indifference test to Title IX sexually hostile environment claims.[87] Further, as the *Bryant* court stated, because Congress based Title IX on Title VI courts can apply *Davis* directly to a determination of Title VI intentional racial discrimination.[88] Because other circuits have adopted and applied the *Davis* standard in Title IX cases, it seems likely that

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[81] *Id.*

[82] *Id.* at 938.

[83] *Id.*; *see also* Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 648–49 (1929) (describing clearly unreasonable standard).

[84] Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 933 (10th Cir. 2003).

[85] *See* Murrell v. Sch. Dist. No. 1, Denver, Colo., 186 F.3d 1238 (10th Cir. 1999) (applying the four factors of a *Davis* claim to a Title IX suit alleging failure to remedy student-on-student sexual harassment).

[86] *See id.* at 1246–49 (holding that a mother stated a claim for relief when she alleged that school officials had actual knowledge of and were deliberately indifferent to the alleged sexual harassment of her daughter).

[87] *E.g.*, Hawkins v. Sarasota County Sch. Bd., 322 F.3d 1279 (11th Cir. 2003); Saxe v. State College Area Sch. Dist., 240 F.3d 200 (3d Cir. 2001); Vance v. Spencer County Pub. Sch. Dist., 231 F.3d 253 (6th Cir. 2000); Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736 (9th Cir. 2000).

[88] *Bryant*, 334 F.3d at 934.

it is only a matter of time before other circuits apply the deliberate indifference test to Title VI cases alleging racially hostile environments.

The Third, Fourth, and Sixth Circuits have recently considered the theory of deliberate indifference in the context of a Title VI claim.[89] These Circuits declined to extend *Davis*'s deliberate indifference theory to the Title VI claims they considered, but this does not affect the likelihood that courts will apply the deliberate indifference test to Title VI *intentional* racial discrimination claims. In these cases, the plaintiffs alleged disparate impact, not the creation or maintenance of a racially hostile environment. These cases determined that disparate impact was an unintentional form of discrimination; therefore, no private right of action existed to enforce such claims under section 601. The *Bryant* court declined to address the Bryants' disparate impact claim, and left open the question of whether *Sandoval* would foreclose that claim.[90] Thus, the *Bryant* decision does not contradict the decisions of the Third, Fourth, and Sixth Circuits. Instead, the *Bryant* court dealt with the hostile environment claim, and found that the creation of a hostile environment could be intentional, thus allowing for a private right of action under section 601.[91]

Further, other courts have applied the deliberate indifference theory to allow or disallow recovery in such diverse claims as those brought under Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act,[92] the Eighth Amendment,[93] and the Equal Protection Clause of the Fourteenth Amendment.[94] The trend that develops from these cases is the expansion, not contraction, of the deliberate indifference theory of recovery. Considering the expansion found in these cases, as well as various circuits' application of the deliberate indifference test to Title IX claims, which are directly analogous to Title VI claims, it seems likely that within the next few years, other circuits will allow plaintiffs to recover damages under the deliberate indifference theory for Title VI intentional discrimination claims, including the creation or maintenance of a racially hostile environment.

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[89] Peters v. Jenney, 327 F.3d 307 (4th Cir. 2003); Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548 (3d Cir. 2002); *see* Almendares v. Palmer, 284 F.Supp.2d 799 (N.D. Ohio 2003) (stating that "the Sixth Circuit has not adopted the deliberate indifference test for Title VI cases").

[90] Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 930–31 (10th Cir. 2003).

[91] *Id.* at 933.

[92] *E.g.*, Swenson v. Lincoln County Sch. Dist. No. 2, 260 F. Supp. 2d 1136 (D. Wyo. 2003).

[93] *E.g.*, Estate of Sisk v. Manzanares, 270 F. Supp. 2d 1265 (D. Kan. 2003).

[94] *E.g.*, Gant v. Wallingford Bd. of Educ., 195 F.3d 134 (2d Cir. 1999).