

Did Andover violate federal disabilities act?

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American education is on trial today more than ever before. Not just public school education is under assault. Consider this lawsuit now pending against Phillips Academy in Andover.

The plaintiffs are 18-year-old Nicholas Panagopoulos of Sudbury and his mother, Nancy Axelrod. Nicholas enrolled in the exclusive private school in 1995. He is midway through his senior year – or would be if the faculty did not vote, 168 to 2, to expel him last December.

This young man was not ousted for disciplinary issues.

He maintained a cumulative C average, although he did fail three classes, which he later made up. His problem does not seem to be a lack of intelligence. Nicholas scored 770 on his English SAT and 640 on the mathematics portion of the test. He also received a 1999 National Merit Scholarship commendation as a finalist.

His lawyer, Marc Redlich, contends that Nicholas was expelled for a simple reason: He has attention deficit disorder, also known as attention deficit hyperactivity disorder.

Douglas Seaver, the lawyer who represents Phillips, says the school's position is equally simple: "This student did

not successfully perform his work, did not put in the amount of effort the school expected, in compliance with school policies."

But Redlich argues that the fancy private school – or "independent" school, as such institutions prefer to be called – collected more than \$90,000 in tuition, then failed to accommodate this student's special learning needs. The school, he says, failed to notify teachers officially that he had attention deficit disorder or relay his symptoms.

All that, contends Redlich, violates the Americans with Disabilities Act, which prohibits discrimination on the basis of disabilities. The law also requires "reasonable accommodation" of handicapped students by educational institutions, public and private. The school argues that Nicholas was provided with, or at least offered, "numerous accommodations."

In February, US District Judge Edward F. Harrington ordered the school to readmit Nicholas pending resolution of the matter on the merits. A trial is scheduled to begin Monday in US District Court.

Seaver, the school's lawyer, says it is "incredibly important" for an institution

like Andover to maintain its academic standards. And with teachers "already quite busy" and under a lot of pressure regarding grades and college recommendations, the school doesn't want or need the burden of justifying decisions such as this student's expulsion.

Redlich, representing the plaintiff, says this is all about "the arrogance of a school to collect over \$90,000 from a family and then throw him out before his last semester, knowing he has a disability, knowing this would ruin his chances for getting into a good college."

The truth? It likely lies somewhere beyond the bare legal pleadings in this case, and it is tricky.

Perhaps the Andover faculty sincerely believes that Panagopoulos and their hallowed institution are not a good fit and both are better off without each other. Schools like this are not remedial in any sense of their mission.

But if a school, public or private, knows about an ADD diagnosis, under federal law it is responsible for communicating that knowledge and providing, not remediation but some "accommodation." That is where the legal test will lie: Did Andover do enough to accommodate, or did the school just want to

be rid of a problem student?

Given the level of anger directed at public schools for their highly publicized failures, it is worth noting exactly how private schools like Andover maintain their highly publicized success.

First, these top independents accept only the brightest and, for the most part, only the brightest who can afford their tuitions. Once they have assembled this elite student corps, it is basically sink or swim. There's some tutoring and hand-holding but little incentive to accommodate special needs – especially the kind that will ultimately drag down a school's track record for placing its students in top-ranked colleges.

And that is the underlying name of the private school game – encouraging parents to pay huge tuition bills in the expectation it will land their little genius in Harvard or Yale. Students like Nicholas Panagopoulos are an obstacle to the college placement game plan.

"A wealthy and well-endowed private school like Phillips is no more entitled to shirk its statutory responsibility to disabled students like Nicholas than local public schools are," writes Nicholas's lawyer in his complaint.

Phillips Academy in Andover is begging loudly and forcefully to differ.

Joan Vennoch is a Globe columnist.

Student goes to court to fight expulsion.