



CAMPUS COUNSEL

A Legal Blog Written for Administrators, HR professionals, in-house counsel, and deans at colleges and universities

“Regarded As” Theory Sacks University

BY ROBERT G. YOUNG • DECEMBER 18, 2018

On November 14, the United States District Court for the Southern District of Mississippi [allowed](#) a student’s claim against the University of Southern Mississippi (USM) to proceed to discovery. USM had recruited the student to play football, offering a full scholarship. The student has only one kidney, but when he arrived on campus, USM’s Student Health Services Center cleared him to play without restrictions. As he started practicing with the team, the student told a team trainer that he had one kidney. The trainer sent the student to the team physician, who refused to clear the student to play for fear of creating potential liability for the institution, even though the student’s doctor (who he consulted for a second opinion under USM’s applicable policies) cleared him to play with no restrictions and the student offered to sign a liability waiver. Because USM would not allow him to play for the football team, the student sued for disability discrimination.

USM sought to dismiss the lawsuit, arguing that the student could not show that he was “disabled” within the meaning of the disability discrimination laws because having one kidney did not substantially limit any major life activities. The Court rejected USM’s effort to dismiss the lawsuit, finding that the student could make a viable claim as being “regarded as” disabled by the institution. Under the “regarded as” definition, an institution can be liable simply by knowing of a physical impairment and making an adverse decision based on that impairment; a plaintiff pursuing such a theory does not need to show any substantial limitation of any major life activity.

***Client Tip:** This case serves as a stark reminder that institutions should not make decisions—whether in the employment or the student relations realm—based on its own perception of an individual’s condition or its unsupported assumptions about how a condition might impact the individual.*