

RAISING THE BAR

MAUREEN REIDY WITT STANDS UP FOR A STUDENT'S RIGHTS BY ANDREW BRANDT



When Ebonie S. was placed in her chair and pushed up to her U-shaped desk, she was surrounded on three sides. Three becomes four if the wooden bar behind her chair, which connected the desk's left side to its right, was secured with a barrel-bolt lock. In this position, Ebonie could no longer push her chair out from the desk; whether she could even get out—by sliding under or crawling over the bar—was a matter for dispute.

"It has been referred to as a restraining desk," says Maureen Witt, a Holland & Hart attorney who represented Ebonie and her mother in a lawsuit against Pueblo School District 60. "This particular desk, we found was never used anywhere else in the entire country—they made this desk in this school district, and they were used only in the special-needs classrooms."

Ebonie, who has multiple developmental and intellectual disabilities including Down syndrome, was held in this desk throughout the 2006-07 school year when she was in kindergarten. Witt, who handles products liability, employment and commercial litigation, and alternative dispute resolution, got involved in the case in late 2010.

"I decided when I was in about third grade that I wanted to be a trial lawyer, and I had to overcome an extraordinary level of shyness to be able to do it," she says. "I found the whole courtroom experience on TV to be absolutely captivating.

"I like the challenge of thinking on your feet, having to adjust to things that come up during the trial. I like everything from thinking about how to put your best foot forward in an interesting, and hopefully enthralling, opening statement, to strategically deciding which witnesses to call and in which order to call them. And it's just a thrill—a high almost—to give a great closing argument."

Though Ebonie's case was Witt's first foray into education-related work, it wasn't her first time on the plaintiff's side of the

courtroom: In the late '80s she represented individuals who had been infected with HIV through blood transfusions.

"We tried the first HIV blood-transfusion case in the country," she says. "People were willing to assume that the majority of people who were contracting HIV were gay men, and it somehow affected the normal thinking process of doctors in the blood-banking field as to how donors should be screened and how blood should be tested to protect people from contracting HIV."

The trial in the Ebonie S. case was originally set for spring 2011, but the District Court of Colorado dismissed the claims that the desk violated the Fourth and Fourteenth Amendments. Interlocutory appeals were then denied at the 10th Circuit as well as at the U.S. Supreme Court. So the trial began in March 2015 based solely on disability discrimination claims.

Witt had to contest both the district's and the teacher's perspectives on the use of the desk, a challenge different from—yet similar to—her earlier HIV work. She also had to explain how the restraining desk would affect Ebonie in the long run, something Witt says was difficult to convey. She wound up using expert witnesses, "one on the kind of universal condemnation of restraint in the school setting, and one on the long-term psychological and neurological effects of the restraint on Ebonie."

In the end, the jury awarded \$2.2 million to Ebonie S. and her mother. The ruling is currently on appeal.

"I didn't think there were any errors in the trial, so I don't think there's any basis for reversal," says Witt. "The teacher and paraprofessionals may say that they believed that what they did was somehow appropriate but, at best, they had a very skewed sense of propriety." [S1](#)