

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CHILD WITH DISABILITY, and MOTHER and
FATHER, individually and on behalf of their son, a
minor,

Plaintiffs,

COMPLAINT

-against-

CV:

SACHEM CENTRAL SCHOOL DISTRICT BOARD
OF EDUCATION; SACHEM CENTRAL SCHOOL
DISTRICT; and JAMES NOLAN in his official capacity
as Superintendent for Sachem Central School District;

Defendants.

PRELIMINARY STATEMENT

1. Plaintiffs MOTHER and FATHER (hereinafter “Parents”) are the custodial parents and guardians of Plaintiff CHILD WITH DISABILITY (hereafter “Child”) and commence this action to enforce Child’s rights as a student with a disability to use of his service dog while on the school grounds of the public school pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132.

2. Defendants have refused to permit Child access to his service dog while attending school or while attending school functions on the public school premises.

3. Plaintiffs seek injunctive and declaratory relief, damages and attorney’s fees and costs.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.

5. Plaintiffs' federal claims are made pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act 42 U.S.C. § 12132.

6. This Court has the authority to grant declaratory and injunctive relief under 28 U.S.C §§ 2201, 2202.

7. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b), as all of the events and omissions complained of below occurred in this District.

PARTIES

8. Plaintiffs, Parents and Child, are citizens of the United States and reside in Suffolk County, New York.

9. Plaintiffs bring this action under fictitious names to protect Child, a minor, from harassment, social stigmatization, humiliation, embarrassment, and unwarranted invasions of his privacy.

10. This suit will necessarily require the identification of the Child's medical and mental health conditions, which constitute a disability.

11. Publishing the identity of Plaintiffs may subject Child to being singled out for discrimination, the very harm that this litigation seeks to remedy.

12. The full name of Plaintiffs and their exact address have been filed, under seal, with the Clerk of this Court and will be provided to counsel for Defendants.

13. Child is a 12-year-old student with a disability and attends the Sachem Central School District.

14. Child previously attended Defendants' public educational program at Gatelot Elementary School, located at 65 Gatelot Avenue, Lake Ronkonkoma, N.Y., 11779.

15. Child now attends Defendants' public educational program at Samoset Middle School, located at 51 School Street, Lake Ronkonkoma, N.Y., 11779.

16. Child's disabilities include, but are not limited to,

- a. Autism Spectrum Disorder;
- b. Disruptive Behavior Disorder NOS;
- c. Attention Deficit Hyperactivity Disorder Combined-type; and
- d. Transient Motor Tic Disorder.

17. Child's disabilities substantially limit the major life activities of learning and communicating.

18. Defendant Sachem Central School District Board of Education is established pursuant to New York Education Law § 1804.

19. Its responsibilities are designated in New York Education Law § 1804.

20. Defendant Board is located 51 School Street, Lake Ronkonkoma, N.Y., 11779

21. Defendant Sachem Central School District is established pursuant to New York Education Law § 1802.

22. Its powers are designated in New York Education Law § 1802.

23. Defendant Sachem Central School District is located at 51 School Street, Lake Ronkonkoma, N.Y., 11779

24. Defendant James Nolan is the Superintendent of the Sachem Central School District.

25. Pursuant to New York Education Law § 1711, Defendant Nolan is responsible for the supervision of the schools.

26. Defendant Nolan has executive authority over the school system and the responsibility for its supervision.

27. Defendant Nolan is responsible for general oversight of the operations of the district, and is being sued in his official capacity.

28. Defendant Nolan maintains offices at 51 School Street, Lake Ronkonkoma, N.Y. 11779.

29. Defendants are a public entity under 42 U.S.C. § 12131.

30. Defendants are a recipient of federal financial assistance.

STATEMENT OF FACTS

31. Child was and is prescribed a service dog by his treating physician on February 28, 2012 to assist him with daily tasks, manage his behavioral episodes, and help Child develop life skills impacted by his disability.

32. In April 2012, Child received a service dog from Canine Companions for Independence (CCI).

33. CCI trains dogs not to solicit attention, disrupt business, vocalize unnecessarily or show aggression.

34. CCI service dogs are trained to perform at least three tasks to serve an individual with a disability.

35. Child's service dog has been individually trained to perform specific tasks for Child to assist him in managing his disability.

36. Child can command his service dog by himself.

37. When in public, a third party or handler facilitates Child's use of the service dog.

38. Child's dog is trained to perform tasks for Child without prompting or command.

39. Child's service dog is trained to retrieve dropped or missing objects for Child so that he does not become distracted from a task.

40. Child's service dog lies on top of him providing deep pressure touch stimulation to calm him when he is experiencing behavioral challenges related to his disability, such as tantrums or meltdowns.

41. Child's service dog prevents or redirects Child from wandering or eloping, which is a behavior that is associated with Child's disability.

42. The service dog finds Child and brings him back if he wanders or elopes.

43. Child's service dog recognizes self-stimulating behaviors like flapping hands and pacing in circles.

44. Child's service dog will nudge Child to stop these behaviors.

45. Child's service dog interrupts and decreases disruptive, impulsive, and repetitive behaviors by nudging, placing head on his lap, pawing, and providing tactile stimulation.

46. Child's service dog navigates him around obstacles and crowds.

47. Child's service dog facilitates transition from one activity to the next by keeping Child calm and focused during the transition.

48. Child's service dog guides Child through his daily routines.

49. Child's service dog alerts him to wake for school.

50. Child's service dog helps him dress and undress.
51. Child's service dog opens and closes doors.
52. Child's service dog acts as a social and emotional bridge so Child can communicate his needs.
53. Child's service dog communicates for Child by barking when Child gives a hand signal.
54. In May 2012, Parents notified Defendants that Child would be accompanied to school by his prescribed service dog.
55. Since May 2012, Defendants have refused to allow Child access to school grounds with his service dog.
56. On or about May 31, 2012, Defendants refused to allow Child's service dog at any Committee on Special Education meetings.
57. On May 31, 2012, Defendants refused to allow Parents to bring Child's service dog to school to demonstrate the tasks the service dog could perform.
58. On or about June 12, 2012, Defendants refused Plaintiffs entry to school property for after-school and non-academic events with Child's service dog.
59. On or about December 4, 2012, Defendants contacted Child's mother to pick up Child because he was engaging in a behavioral episode that Defendants' employees were not able to resolve.
60. Defendants refused to allow Child's mother to enter school property with the service dog to help calm Child down and to help him leave school property calmly.
61. Defendants refused to allow Child's service animal to enter the school building even for this limited purpose of picking him up from school.

62. Defendants have a no pet policy on school property.
63. Defendants have never provided Plaintiffs with a service animal policy.
64. Defendants know that a medical doctor prescribed the service dog for the Child.
65. Defendants have at all times claimed that Child's service dog is a "pet."
66. Defendants have refused to discuss Plaintiffs' requests for a service dog as a reasonable accommodation under the ADA and Section 504.
67. Defendants have refused to create a 504 Plan that includes that Child's service dog accompany him in school and at school functions.
68. Despite Parents' repeated requests, Defendants failed to discuss Parents' request that the service dog accompany Child in school and at school programs, events, and activities.
69. The Defendants refused to discuss with Parents the related supports for the Child's service animal in school, including an adult handler that facilitates Child and his service dog in public.
70. Child's relationship with his service dog is negatively impacted by the service dog's absence at school because the prolonged separation undermines the ability of the service dog to respond to Child's behaviors or commands.
71. Plaintiffs have exhausted all administrative processes required by *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240 (2d Cir. 2008).
72. The final administrative decision found that the administrative review officer lacked jurisdiction to review claims of discrimination based on federal and state laws.

CLAIMS FOR RELIEF

First Claim for Relief Violation of Title II of the ADA, 42 U.S.C. § 12132

73. Plaintiffs reallege and incorporate the above paragraphs as though fully set forth herein.

74. Child is a student with multiple disabilities including Autism Spectrum Disorder, Disruptive Behavior Disorder NOS, Attention Deficit Hyperactivity Disorder, and Transient Motor Tic Disorder.

75. These disabilities substantially limit the Child's daily life activities.

76. Defendants are a "public entity" within the meaning of the ADA. 42 U.S.C. § 12131, because they use federal financial assistance to operate a public educational program to the residents of the school district.

77. Child is qualified to participate in or receive the benefit of Defendants' programs and activities.

78. A "service animal" is currently defined by the regulations implementing the ADA as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." 28 C.F.R. § 36.104.

79. The definition specifically includes "helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors." *Id.*

80. Child's service dog is prescribed by Child's treating physician.

81. Child's service dog is individually trained to serve Child's specific needs based on his disabilities.

82. Defendants failed to provide Child with reasonable accommodations by repeatedly refusing to allow Child's service dog on school district property.

83. Defendants' refusal of Child's service dog in school programs and activities denied Child the benefit of Defendants' services, programs and activities, and discriminates against Child on the basis of his disability.

84. Because Defendants' discriminatory conduct is ongoing, declaratory and injunctive relief against Defendants are appropriate pursuant to 42 U.S.C. §§ 12132 and 12133.

Second Claim for Relief
Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794

85. Plaintiffs reallege and incorporate the above paragraphs as if fully set forth herein.

86. Title 29 U.S.C. §§ 705 and 794 (commonly known as "Section 504"), prohibits the exclusion of or discrimination against an otherwise qualified individual with a disability from any program or activity receiving federal financial assistance.

87. Child is a student with multiple disabilities including, but not limited to, Autism Spectrum Disorder, Disruptive Behavior Disorder NOS, Attention Deficit Hyperactivity Disorder, and Transient Motor Tic Disorder.

88. These disabilities substantially limit his daily life activities.

89. Child is a qualified individual for Defendants' programs, activities, and services.

90. Defendants denied Child the benefits of their programs, activities, and services solely because of his disability.

91. Defendants receive federal financial assistance to operate a public educational program for the residents of the school district.

92. Defendants are a covered entity within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

93. Plaintiffs requested that Child be permitted to bring his service dog to school which is necessary because of his disability.

94. A “service animal” is defined by federal regulations, as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” 28 C.F.R. §36.104.

95. The definition includes such tasks as “helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.” *Id.*

96. Child’s service dog is prescribed by his treating physician.

97. Child’s service dog is individually trained to serve Child’s specific needs based on his disabilities.

98. Defendants failed to provide Child with reasonable accommodations by repeatedly refusing to allow Child’s service dog on school district property.

99. Defendants’ continued refusal to allow Child’s service dog on school district property violates Plaintiffs’ rights under Section 504 of the Rehabilitation Act by discriminating on the sole basis of Child’s disability.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1) a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, that Defendants' practices, policies, and procedures subjected Plaintiffs to discrimination in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act;

2) a temporary restraining order and preliminary injunction against Defendants and their agents, ordering Defendants to allow Child's service dog and related accommodation services on Defendants' premises during Defendants' programs, activities, and events;

3) a judgment ordering Defendants to allow Child his service dog and supports necessary to access this reasonable accommodation at all times when Child is on Defendants' premises or participating in Defendants' programs, services, or activities;

4) an award of compensatory damages, special damages, reasonable costs and attorneys' fees; and

5) an order of any and all other relief that may be necessary and appropriate.

DATED: May 19, 2015
Albany, NY

Respectfully submitted,

/s/

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