

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NEW YORK
 ROCHESTER



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UNITED STATES DISTRICT COURT CLERK
 WESTERN DISTRICT OF NEW YORK

15 CV 6583 CJS

 THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.)
)
 GATES-CHILI CENTRAL SCHOOL)
 DISTRICT,)
)
 Defendant.)

Civil Action No. _____

COMPLAINT

The United States of America, by its undersigned attorneys, hereby files this Complaint, and alleges the following upon information and belief:

- The United States brings this action against the Gates-Chili Central School District ("District") for violation of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, and the Title II implementing regulation, 28 C.F.R. Part 35, by failing to reasonably modify its policies, practices, or procedures to permit a student, D.P., to bring her service dog ("Service Dog") to school unless accompanied by a separate, full-time, adult handler ("Handler") provided by D.P.'s mother (the "Parent"). 42 U.S.C. § 12132; 28 C.F.R. § 35.136(a).
- Congress enacted the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities[.]" 42 U.S.C. § 12101(b)(1). In so doing, Congress found that the forms of discrimination encountered by individuals with disabilities include "the discriminatory effects of overprotective rules and

policies” and the “failure to make modifications to existing facilities and practices.” *Id.* § 12101(a)(5). The ADA’s mandate that a public entity, such as a public school or school district, modify its policies, practices, and procedures to permit the use of a service animal by a student with a disability furthers the ADA’s overarching goals of ensuring equal opportunity, full participation, and independence for individuals with disabilities. *See id.* § 12101(a)(7); 28 C.F.R. § 35.136(a).

JURISDICTION and VENUE

3. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. § 12133, and 28 U.S.C. §§ 1331 and 1345, because it involves claims arising under federal law and is hereby commenced by the United States.

4. The Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201-2202 and 42 U.S.C. § 12133.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because: (1) the Defendant District is located and operates in the Western District of New York, and (2) a substantial part of the events or omissions giving rise to the claims occurred in the Western District of New York. 28 U.S.C. § 1391.

PARTIES

6. Plaintiff is the United States of America.

7. Defendant, Gates-Chili Central School District, along with its respective departments, agencies, and other instrumentalities, is a “public entity” within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

FACTS

8. D.P. has Angelman Syndrome, autism, epilepsy, asthma, and hypotonia. Angelman Syndrome is a lifelong disorder with manifestations that include developmental delay, lack of speech, seizures, and walking or balance disorders. Autism inhibits D.P.'s ability to perceive danger, and causes meltdowns, elopement (wandering), and stimming (repetitive body movements or repetitive movement of objects, such as flapping arms over and over). Hypotonia means decreased muscle tone. D.P. also has a history of prolonged grand mal seizures.

9. D.P.'s impairments substantially limit the operation of major bodily functions, including her brain function and neurological system, and the major life activities of caring for oneself, walking, speaking, learning, thinking, and communicating. D.P. has a disability within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.104.

10. D.P., a student enrolled in the District, is a qualified individual with a disability. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104.

11. In January 2011, D.P. obtained a service dog. The Service Dog, a hypoallergenic breed selected to accommodate D.P.'s asthma, is individually trained to perform tasks for the benefit of D.P. that are directly related to her disabilities.

12. The Service Dog can detect an oncoming seizure before humans can and is capable of alerting others that D.P. is going to have a seizure. For example, the Service Dog sleeps next to D.P. and alerts her Parent to oncoming seizures during the night. The Service Dog has also notified school staff of seizure activity.

13. With regard to D.P.'s autism, the Service Dog is trained to sit down to prevent elopement, to apply deep pressure to prevent or limit meltdowns, and to disrupt stimming.

14. In addition, the Service Dog provides mobility support for D.P.'s core body weakness. D.P., prior to having her Service Dog, had to constantly hold the hand of an adult and be transported long walking distances (to the school bus, for example) by using a wheelchair or being carried. With the Service Dog's assistance, D.P. can walk to the bus holding the harness of her Service Dog, which provides both guidance and support.

15. D.P. and the Service Dog are also connected by a leash, or tether. The harness provides D.P. with the support she requires to ambulate independently, and the leash is used to tether D.P. to her Service Dog.

16. D.P.'s Service Dog is trained to go through the school day without needing to be walked, fed, or to relieve itself.

17. During the 2011-12 school year, the Service Dog began to accompany D.P. on the school bus and at preschool. District staff assisted D.P. with verbal commands and tethering and untethering the Service Dog when necessary. In D.P.'s teacher's written comments that year, she stated that the Service Dog "is providing support that provides [D.P.] with much more autonomy, and keeps everyone[']s hands from constantly handling her. [The Service Dog] is helping [D.P.] make transitions smoothly, helping to support her in walking through the halls."

18. After completing preschool, D.P. was scheduled to begin kindergarten in the fall of 2012 in a new school in the same school district. At a meeting with the Parent on or around September 4, 2012, the District told the Parent that it would not allow staff to assist D.P. in handling her Service Dog, despite having done so in the past. The District also informed the Parent that D.P. could no longer bring her Service Dog to school unless the Parent provided a separate, adult handler.

19. The Parent objected to the District's actions, but, as a result of the District's position, the Parent hired the Handler.

20. Since the Service Dog started accompanying D.P. to school, D.P. is learning nonverbal ways to issue commands. For example, D.P. can: (1) jiggle the Service Dog's collar or pull up on the harness to indicate "let's go"; (2) put out her hand to indicate "wait"; (3) touch its posterior area for the command "sit"; and (4) pat the ground for the command "down" or "down hold." D.P. gives the Service Dog rewards when it performs its tasks.

21. The Service Dog also responds to certain commands from the teacher to the class. For example, if the teacher says "let's go" to the class, the Service Dog responds accordingly.

22. D.P. has also learned how to tether herself to the Service Dog. Because of her disabilities, D.P. remains tethered to the Service Dog most of the day. Untethering D.P. from her Service Dog is infrequent and is often for short intervals such as to participate in gym or for personal hygiene and medical issues.

23. Due to her disabilities, during the course of the school day, D.P. requires intermittent assistance with verbal commands and tethering and untethering the Service Dog when necessary.

24. Beginning in Kindergarten, the Handler provided the assistance previously provided by school staff. This is limited to tethering and untethering the Service Dog from D.P. and assisting D.P., who is nonverbal, in issuing certain commands to the Service Dog.

25. There are generally only five commands used with the Service Dog during the school day: "down," "down hold," "let's go," "wait," and, very rarely, "bring her." The Service Dog is untethered and tethered about 15 times a day or less (during gym, for example), which takes approximately three seconds each to accomplish. The Handler currently spends, over the course

of a school day, approximately 15 minutes assisting D.P. with the Service Dog. The rest of the day, the Handler simply sits or stands by D.P. and her Service Dog.

26. In addition to the Handler (provided by the Parent), throughout the school day D.P. is always accompanied by her 1:1 aide and a nurse, both provided by the District.

27. District staff, including D.P.'s 1:1 aide and nurse, ensure that D.P.'s seizure protocol is followed when the Service Dog alerts to a seizure. The District's seizure protocol instructs staff to ensure D.P. is safe by, among other things, issuing the command "snuggle" to the Service Dog to instruct it to press its body against D.P. The District's nursing notes indicate that the Service Dog has alerted that D.P. was having seizure activity on multiple occasions, enabling the District to follow the proper seizure protocol in a timely manner.

28. In a letter to the District dated December 19, 2012, the Parent reiterated her objections to the District's approach to D.P. and her Service Dog and requested that the District permit D.P. and her Service Dog to attend school without a separate, adult handler provided by the Parent. The Parent asked the District to permit D.P.'s 1:1 aide to assist D.P. in issuing commands and tethering and untethering the Service Dog (the two functions performed exclusively by the Handler).

29. The District refused and continues to refuse to allow the Service Dog at school or school-related activities unless accompanied by a separate, adult handler provided by the Parent.

30. The District also refuses to permit D.P. to use her Service Dog on the school bus unless accompanied by a separate, adult handler provided by the Parent. In addition to a bus driver, D.P.'s school bus is staffed with a bus monitor and a nurse.

31. Beginning in September of 2012 and continuing through the present, the Parent has paid over \$25,000 out of pocket for the Handler to accompany D.P.'s Service Dog to school.

32. On August 13, 2015, pursuant to 28 C.F.R. Part 35, Subpart F, the Department issued a letter of findings of fact and conclusions of law, which included the minimum steps that the District must take to comply with Title II of the ADA and remedy past violations. The Department's letter determined that, in refusing to reasonably modify its policies, practices, or procedures to permit D.P. to handle her Service Dog at school with intermittent assistance from school staff, the District is in violation of Title II of the ADA and its implementing regulation.

33. To date, the District has not modified its policies, practices, or procedures with respect to D.P.'s Service Dog or taken the steps proscribed in the Department's August 2015 letter to come into compliance with the ADA.

34. All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 28 C.F.R. pt. 35, subpt. F.

CAUSE OF ACTION
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT
(42 U.S.C. §§ 12131-12134)

35. The allegations set forth in Paragraphs 1 through 34 of this Complaint are hereby realleged and incorporated by reference.

36. The District's actions constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35, by:

- a. Denying D.P. an equal opportunity to participate in or benefit from any aid, benefit, or service provided to other students, 28 C.F.R. § 35.130(a), (b)(1);
- b. Providing D.P. with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to other students, 28 C.F.R. § 35.130(a), (b)(1);

- c. Failing to reasonably modify its policies, practices, or procedures to permit D.P. to bring her Service Dog to school without a separate, adult handler provided by the Parent, 28 C.F.R. §§ 35.130(b)(7) and 35.136; and
- d. Failing to reasonably modify its policies, practices, or procedures to provide assistance to D.P. in handling her Service Dog, 28 C.F.R. §§ 35.130(b)(7) and 35.136.

37. D.P. and the Parent are aggrieved persons entitled to the remedies, procedures, and rights of Title II of the ADA. *See* 42 U.S.C. § 12133.

38. As a result of the District's unlawful actions, D.P. has suffered discrimination, been deprived of independence, experienced pain and suffering and emotional distress, and otherwise been aggrieved.

39. Also as a result of the District's unlawful actions, the Parent has incurred out-of-pocket losses, including over \$25,000 to pay for the Handler to accompany the Service Dog to school; experienced pain and suffering and emotional distress, including anxiety, frustration, humiliation, stigmatization, and lost opportunity; and otherwise been aggrieved.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court:

A. Grant judgment in favor of the United States and declare that the District's actions as set forth in this Complaint violate Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35.

B. Enjoin the District, along with its respective departments, agencies, and other instrumentalities, and all others in concert or participation with them, from engaging in discriminatory policies and practices against individuals with disabilities.

C. Order the District to permit D.P. to act as the handler of her Service Dog with assistance from school staff.

D. Order the District to comply with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35, including making reasonable modifications to District policies, practices, and procedures where necessary to avoid discrimination against a student with a disability who uses a service animal.

E. Award compensatory damages, including damages for out-of-pocket expenses, pain and suffering, and emotional distress, to aggrieved persons, including D.P. and the Parent, in an appropriate amount for injuries suffered as a result of the District's failure to comply with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

F. Order such other appropriate relief as the interests of justice may require and to make D.P. and her Parent whole and place them in the same position they would have been in absent the District's discrimination.

DATED: September 29, 2015

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