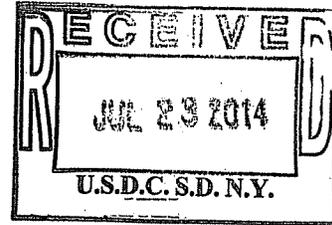


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JUDGE SEIBEL



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

CITY SCHOOL DISTRICT OF NEW
ROCHELLE,

Defendant.

COMPLAINT

14 Civ. ____ ()

JURY TRIAL DEMANDED

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

INTRODUCTION

1. This action is brought by the United States against the City School District of New Rochelle (the "School District"), to enforce the statutory and regulatory provisions of Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134 and its implementing regulation, 28 C.F.R. Part 35, for, among other things, its failure to evacuate two students at the New Rochelle High School ("NRHS" or the "High School") during a school-wide evacuation that occurred on January 31, 2013.

JURISDICTION AND PARTIES

2. This Court has jurisdiction of this action under 42 U.S.C. § 12133, 42 U.S.C. § 2000e-5(f), and 28 U.S.C. §§ 1331 and 1345. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202, 42 U.S.C. § 12133, and 42 U.S.C. § 2000e-5(f), and authority to grant equitable relief pursuant to 42 U.S.C. § 12133 and 42 U.S.C. § 2000e-5(f).

3. The School District is a public school district located in New Rochelle, New York, and is a “public entity” within the meaning of 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA and its implementing regulation, 28 C.F.R. Part 35.

4. J.F. is a qualified individual with a disability within the meaning of 42 U.S.C. § 12131. J.F. has cerebral palsy, which substantially limits the major life activities of walking and the major bodily function of her neurological/muscular system. She uses a wheelchair for mobility.

5. A.B. is a qualified individual with a disability within the meaning of 42 U.S.C. § 12131. A.B. has cerebral palsy, which substantially limits the major life activities of walking and the major bodily function of his neurological/muscular system. He uses a wheelchair for mobility

FACTS

6. The High School is located at 265 Clove Road, New Rochelle, New York, and is part of the City School District of New Rochelle (the “District”).¹ The District consists of six elementary schools, two middle schools and NRHS.

¹ The High School has an additional campus located at 50 Washington Avenue. This Complaint relates to the Clove Road campus.

7. The High School serves over 3000 students and is comprised of multiple buildings, including indoor swimming facilities, eight tennis courts, three football fields, an outdoor track, a television station and a planetarium.

8. At NRHS, the students are divided into four “houses” for administrative purposes and generally attend classes in either of two buildings, sometimes referred to as the “Main Building” and “House Four.” The Main Building and House Four are separated by a common walkway.

9. The Main Building is generally used by students of Houses 1, 2 and 3. The Main Building consists of three floors. There are accessible means of egress only on the first and second floors. There is no accessible means of egress leading outside from the third floor. Instead, exiting the building from the third floor requires use of either an elevator or stairwell.

10. House 4 has two floors. There are accessible means of egress to the outside from the first floor, but no such egress from the second floor.²

11. At the time of the investigation, NRHS had four students who used wheelchairs because of permanent ambulatory disabilities: J.F., A.B., C.D. and E.F.

12. For at least school year 2012-2013, J.F. had four classes on the third floor of the Main Building and one on the second floor of House Four.

13. For at least school year 2012-2013, A.B. has had one class on the second floor of House Four.

A. Pre-Incident Safety Plan and Training

14. The Vice Principal for the High School is responsible for updating, distributing,

² For ease of reference, the third floor of the Main Building and the second floor of House Four will be referred to as the “inaccessible floor” or “floors,” as appropriate.

explaining, and testing its safety plan. He serves as the “point person” during drills and actual emergencies. The Director of Security for the District coordinates with the Vice Principal during drills and emergencies.

15. Prior to January 31, 2013, NRHS did not have a written safety plan or evacuation plan for students with mobility impairments.

16. Prior to January 31, 2013, it was the policy of NRHS not to evacuate students with mobility impairments during drills.

17. During drills and actual emergencies, NRHS elevators are shut down at or around the time the alarm goes off.

18. Prior to January 31, 2013, only two security guards, at most, had been given training on the use of evacuation chairs during emergencies. No other training relating to the evacuation of mobility impaired students had been provided to security personnel.

19. Prior to January 31, 2013, neither J.F. nor A.B. was permitted to participate equally or in a manner that simulated an actual emergency during drills in which the student body evacuated the school buildings. On numerous occasions, J.F.’s aide was alerted prior to the drill and would exit the building with J.F. by taking the elevator down before it was shut off and the drill began. On other occasions, J.F. and J.F.’s aide stayed in J.F.’s classroom during the drill. Starting in or around 2012, J.F.’s aide would sometimes take J.F. to wait by a designated area (referred to as the “stacks”) during the drill.

20. J.F.’s aide stated that prior to training she received after the January 31, 2013 incident, she had had “no idea” what she would do during an actual evacuation.

21. Prior to January 31, 2013, when A.B. was on an inaccessible floor during a drill,

A.B.'s aide would be alerted by a security guard prior to the drill and would take A.B. out of the building using the elevator before the drill began. According to A.B.'s aide, this had "always been the protocol." A.B.'s aide was instructed that if A.B. was on the first floor, the aide and A.B. should exit through the library, which requires A.B.'s aide to use a key to unlock the library door.

22. At some time during 2012, A.B.'s aide was given the additional protocol that if there was an evacuation while A.B. was on the second floor of House Four, he should meet a security guard who would have a walkie-talkie to communicate with the High School administration. A.B.'s aide stated that he was instructed that if there was an emergency, he and the security guard should carry A.B. down the stairs and place him in a wheelchair that was supposed to be at the bottom of the steps. However, at the time he received the instructions, a wheelchair had not been placed at the bottom of the steps. A.B.'s aide stated, on March 21, 2013, that a wheelchair had never been placed at that location.

B. Pre-Incident Safety Discussions

23. In or around the fall of 2011, the parents of J.F. and A.B. attended a meeting at the NRHS to address safety concerns relating to J.F. and A.B.. Among others, the meeting was also attended by a case worker for A.B., the Vice Principal in charge of evacuations, and the Director of Security.

24. At this meeting, the parents of J.F. and A.B. raised concerns about their children's classes being held on inaccessible floors and whether J.F. and A.B. could be evacuated from those floors in an emergency. The parents of J.F. requested that her classes be moved off the third floor to alleviate their safety concerns. Also at this meeting, the case worker recommended

that the school purchase evacuation chairs to be used for J.F. and A.B. in the event of an evacuation.

25. The school administration refused to move J.F.'s classes on the ground that moving her classes would be "playing into [J.F.'s] anxieties."

26. Two evacuation chairs were purchased and arrived at NRHS in or around August 2012, but they remained in storage until after the January 31, 2013 incident.

27. In 2011-2012, NRHS hired consultants to review and modify NRHS's existing safety plan for the school. However, there were no discussions with these consultants about a plan for evacuating mobility impaired students, and no plan for mobility impaired students was developed.

28. Prior to January 31, 2013, NRHS contacted the Fire Department only once regarding mobility impaired students.

C. Evacuation Incident: January 31, 2013

29. On January 31, 2013, a school employee heard a loud noise and saw a manhole cover lifted off the ground while he was outside of the school. He reported the matter to the High School administration and the Fire Department was called at 9:07 a.m.

30. The Fire Department arrived at 9:12 a.m. and found a smoke condition in the electrical room and the odor of smoke coming from a vault grate by the outside sidewalk. The fire alarm was triggered and the Vice Principal gave the evacuation order over the school's PA system at around 9:20 a.m..

31. The general student body was evacuated and the Vice Principal went outside and asked an officer from the Fire Department about the cause of the alarm. The Fire Department

took carbon monoxide readings and registered a CO reading of 44 ppm on the first floor and 18 ppm in the electrical room.

32. As the student population without mobility impairments evacuated, the Vice Principal remained outside and remained in contact with the Security Director over a walkie-talkie.

33. During and immediately after the evacuation of the student body, J.F. remained inside the Main Building on the third floor. The elevators had been stopped. She was accompanied by her aide, who took her to the stacks, where they met a security officer.

34. The officer radioed the Director of Security, stating that he was still inside the building with a student and her aide. They waited by the stairwell for a response for a minimum of 5-7 minutes. They were then instructed to move to the area around Room 340. There were no further communications. They remained there until the "all clear" signal was given and were never evacuated. At the time, no evacuation chair was available for use in the Main Building.

35. A.B. also remained inside during the evacuation. A.B. remained on the second floor of House Four with his aide. A.B. was also with a school employee who was using a cane. A.B.'s aide met with a security officer, who radioed that he was in the building with disabled individuals. The Security Director responded that the security officer's message had been received, but provided no instructions. A.B. and the others waited without any further communication until the "all clear" signal was given and were never evacuated from the building.

FIRST CLAIM FOR RELIEF

Violation of the Americans with Disabilities Act, 42 U.S.C. § 12132

36. The United States respectfully incorporates the allegations of paragraphs 1 through 35 as if fully set forth herein.

37. The School District's failure to permit J.F. and A.B. to participate in the emergency preparedness program, specifically its failure to implement an appropriate safety plan for the evacuation of J.F. and A.B. and to allow J.F. and A.B. to participate in the evacuation of January 31, 2013, and evacuation drills violates Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulations, 28 C.F.R. Part 35, because defendant's conduct:

- A. Excludes individuals with disabilities from participation in and denies them the benefits of the services, programs or activities of a public entity;
- B. Does not afford qualified individuals with disabilities an opportunity to participate in or benefit from the services, programs, or activities of a public entity that is equal to that afforded others; and
- C. Fails to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court grant the following relief:

- A. Grant judgment in favor of the United States on its complaint and declare that the defendant has violated Title II of the ADA, 42 U.S.C. 12131-34 and its implementing

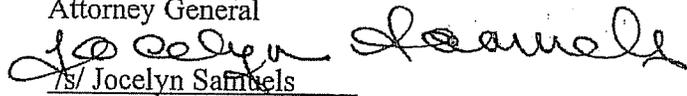
regulations;

- B. Enter a preliminary and permanent injunction requiring defendant to establish an appropriate safety plan for individuals with mobility disabilities;
- C. Enter a preliminary and permanent injunction requiring defendant to allow full participation by individuals with mobility disabilities in all safety plan exercises;
- D. Enter a preliminary and permanent injunction requiring defendant to provide training on Title II of the ADA (including the duty to make reasonable modifications to programs, policies and practices for qualified individuals with a disability), to all current and future School District supervisory employees and all School District guidance employees and special education employees who participate in making decisions, including, but not limited to, regarding the making of modifications and accommodations for qualified individuals with a disability;
- E. Enjoin the School District and the High School from engaging in any act or practice that discriminates against any student on the basis of disability in violation of Title II of the ADA;

- F. Award compensatory damages and injunctive relief to J.F. and M.M. as would fully compensate them for injuries caused by the School District's discriminatory conduct; and
- G. Award such other additional relief as justice may require.

ERIC H. HOLDER, JR.
Attorney General

By:


/s/ Jocelyn Samuels

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

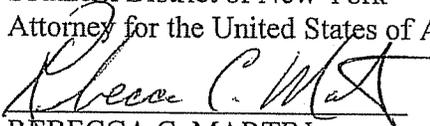
Dated: New York, New York

July 23,

2014

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