

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.: 14-C-1196

MILWAUKEE MONTESSORI SCHOOL
345 North 95th Street
Milwaukee, Wisconsin 53226,

Defendant.

COMPLAINT

THE UNITED STATES OF AMERICA alleges the following:

INTRODUCTION

1. This action is brought by the United States to enforce Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-89, as amended, and its implementing regulation, 28 C.F.R. Part 36, against Defendant Milwaukee Montessori School (“Defendant” or “the School”). Defendant has violated the ADA by: 1) failing to make reasonable modifications to policies, practices, or procedures for a child, M.K., who has a neuromuscular and musculoskeletal disability; 2) disenrolling M.K. from the School due to his disability; and 3) excluding or otherwise denying equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to M.K.’s parents because of the known disability of M.K.

2. The Attorney General has commenced this action based on a determination that a person or group of persons has been discriminated against and that such discrimination raises an

issue of general public importance. 42 U.S.C. § 12188(b)(1)(B). The United States seeks declaratory and injunctive relief, compensatory damages, and a civil penalty against Defendant.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345. The Court may grant declaratory relief and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201 and 2202 and may grant equitable relief, monetary damages, and a civil penalty pursuant to 42 U.S.C. §§ 12188(b)(2).

4. Venue is proper in the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in this district. Venue is further proper in the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

5. Plaintiff is the United States of America.

6. Defendant is a Wisconsin corporation with its principal place of business at 345 North 95th Street, Milwaukee, Wisconsin 53226. Defendant is an independent, private, co-educational Montessori day school, serving children from 18 months old through eighth grade. Defendant bills itself as “one of the oldest and largest independent Montessori schools in the United States,” with an enrollment of over 400 children.

7. Defendant is a public accommodation within the meaning of 42 U.S.C. § 12181(7).

FACTS

8. M.K. was born with a genetic condition affecting his neurological and musculoskeletal systems. The manifestations of M.K.’s condition include low muscle tone

throughout his body, with exaggerated muscle weakness on his right side, and difficulty with balance. The general muscle weakness that M.K. experiences has led to delays throughout his life in acquiring gross motor skills and achieving physical milestones. At all times relevant to this action, M.K. experienced substantial limitations in major life activities including walking and the operation of major bodily functions including neurological and musculoskeletal functions. Specifically, M.K.'s muscle weakness led him to fall more frequently than children his age who do not have physical limitations. M.K. is an individual with a disability within the meaning of 42 U.S.C. § 12102.

9. In March 2011, M.K.'s parents completed application materials on his behalf so that he could attend the School when he turned 18 months old in January 2012. This would allow M.K. to move from the home-based daycare he was attending and, like his older brother, attend the School.

10. On an inquiry about existing "medical conditions" on the School's materials, M.K.'s parents disclosed that M.K. has a "neuromuscular disease" that "results in muscle weaknesses and delayed gross motor skills. We treat it with regular physical therapy."

11. The School accepted M.K. for full-day participation in its First Steps Program, with a contractual period running from January 23, 2012, through August 24, 2012.

12. On the "MMS Physician's Report" required to be tendered to the School, M.K.'s pediatrician cleared him for "Unlimited physical activity."

13. The School's Family Handbook, which is provided to parents of all children enrolled at the School, includes a First Aid Policy. Among other things, the First Aid Policy provides: "Please note that every injury to the head will be treated as serious and young children will not be allowed to nap at school following any injury to the head."

14. M.K.'s first day at the School was January 23, 2012.

15. M.K.'s disability caused him to fall more frequently when walking or running than other toddlers in the First Steps Program.

16. During M.K.'s time at the School, each time that he fell and bumped his head prior to naptime (regardless of the time of day when the fall occurred, the circumstances surrounding the fall, the severity of the fall, or M.K.'s observed activity following the fall), M.K. was not allowed to nap for the remainder of that day.

17. By email on March 30, 2012, M.K.'s mother requested a meeting with Cheryl Kelly, the School's Admissions Director, "very soon to discuss [M.K.] and the ongoing issue of head bumps and no napping."

18. M.K.'s parents met with Ms. Kelly on April 4, 2012. During that meeting, M.K.'s parents orally requested an exception to the "no-nap" provision of the School's First Aid Policy. They further told Ms. Kelly that their pediatrician, with whom they had consulted, stated that she was not concerned about M.K.'s falls from his standing height and that M.K. could safely be allowed to nap following bumps to his head as long as he was not demonstrating signs of head injury. Ms. Kelly informed M.K.'s parents that she would refer the request to the Head of School, Monica Van Aken.

19. On April 5, 2012, M.K.'s mother sent an email to Ms. Van Aken "to formally request an exception to the nap policy as it currently stands." The email further explains: "Without proper rest, [M.K.] is more prone to fall while walking. [. . .] We understand that the nap policy is in place to protect teachers from having to make the decision as to the severity of a head bump and the possibility of head injury. In this case, we feel that the policy actually opens [M.K.] up to more serious injury when he is not allowed to receive adequate rest. [. . .] [W]e are

asking for a policy exception to allow [M.K.], a child with special needs, to continue his participation at [Milwaukee Montessori School]. Based on our consultation with medical professionals, we ask that [M.K.] be allowed to take a regular nap even on days when he bumps his head in the morning. We are prepared to sign a release of liability and will gladly have one prepared for your review.”

20. On April 27, 2012, M.K.’s mother contacted Ms. Kelly via email to “check in on our request for [M.K.] as I’ve not heard a response.” Ms. Van Aken emailed M.K.’s mother later that day to schedule a meeting.

21. On April 30, 2012, M.K.’s parents met with Ms. Van Aken in her office. At that time, Ms. Van Aken informed them that the School would not alter its policy of denying naps to a child who has bumped his or her head. She further informed them that the School was not a good placement for M.K. due to his falls, and that M.K. would no longer be allowed to attend the School.

22. M.K.’s parents were stunned at this news.

23. On May 2, 2012, Ms. Van Aken sent an email to M.K.’s mother, attaching a letter (dated April 26, 2012) on the School’s letterhead. In that letter, Ms. Van Aken states that she has “given serious consideration to your request” to modify the policy in question and decided that “I am not able to grant your request for an exception to the policy.” She references the “obligation to protect [the School] from the risk of liability” and states that “[b]ecause of concerns for [M.K.’s] safety in the school setting . . . we regret to advise you that [M.K.] cannot continue to attend school at [Milwaukee Montessori School].”

24. Ms. Van Aken’s April 26, 2012, letter closes with the following statement regarding the School’s obligations with regard to disability rights laws: “[I]n a conversation with

Cheryl Kelley [sic] you indicated that your request was a request for an accommodation under the Americans with Disabilities Act. We assume that you mean Section 504 of the Rehabilitation Act, which applies to students with a disability in schools that received federal funding. As [Milwaukee Montessori School] does not receive funding from the federal government, that law does not apply to the school.”

25. On May 2, 2012, Ms. Kelly completed a Milwaukee Montessori School Drop/Withdrawal Form, with M.K.’s “Reason for leaving” described as “Enrollment contract ended per letter to parents from M. Van Aken dated 4-26-12.”

26. M.K.’s last day at the School was two days later, on May 4, 2012.

27. M.K.’s disenrollment from the School forced his parents into the stressful situation of expending time and other resources to locate reliable replacement daytime care arrangements for M.K., given both parents’ work commitments.

28. Because of their association with M.K., M.K.’s parents were denied a full and equal opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the School.

29. Because of their association with M.K., M.K.’s parents were denied the ability to contract for, purchase, and utilize needed day care/education services offered and marketed by the School to parents and readily available to parents of other children without disabilities that manifested as did M.K.’s.

30. The School’s discrimination caused M.K.’s parents to feel stigmatized and mistreated, in addition to causing them anxiety, inconvenience, emotional pain, and anguish.

CAUSE OF ACTION

Title III of the Americans with Disabilities Act

The allegations of Paragraphs 1 through 30 are hereby re-alleged and incorporated by reference as if fully stated herein.

The School discriminated on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations in violation of Title III of the ADA, 42 U.S.C. § 12182(a) and the Title III implementing regulation at 28 C.F.R. Part 36, by:

- (a) failing to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, in violation of 42 U.S.C. § 12182(b)(2)(A)(ii) and its implementing regulation at 28 C.F.R. § 36.302;
- (b) disenrolling M.K., on the basis of disability, from the School, which constitutes a denial of the opportunity of M.K. to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202;
- (c) excluding or otherwise denying equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to M.K.'s parents because of the known disability of their son, M.K., in violation of 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff United States prays that the Court:

A. Grant judgment in favor of the United States and declare that Defendant violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36.

B. Enjoin Defendant, its officers, agents, employees, and all others in concert or participation with it, from engaging in discrimination against individuals with disabilities, and specifically from failing to comply with Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

C. Order Defendant to comply with the requirements of Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

D. Order Defendant to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of Defendant's discriminatory conduct to the position that he or she would have been in but for Defendant's conduct;

E. Award compensatory damages, including damages for pain, suffering, and emotional distress, to M.K.'s parents, who are persons aggrieved due to Defendant's actions, or failures to act, in violation of the ADA, for injuries suffered as the result of Defendant's violations of Title III of the ADA, 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36;

F. Assess a civil penalty against Defendant in the maximum amount authorized by 42 U.S.C. § 12188(b)(2)(C), to vindicate the public interest; and

G. Order such other appropriate relief as the interests of justice may require.

Respectfully submitted this 29th day of September, 2014.

FOR THE UNITED STATES OF AMERICA:

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