

Seibel, J.

MEMO ENDORSED

JUDGE SEIBEL

(J)

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14 CV 5606

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/25/2014

UNITED STATES OF AMERICA,

Plaintiff,

- against -

CITY SCHOOL DISTRICT OF NEW
ROCHELLE,

Defendant.

CONSENT DECREE

14 Civ. 5606 (CS.) ✓

WHEREAS, this Consent Decree resolves a civil action brought by Plaintiff United States against Defendant the City School District of New Rochelle to enforce the 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. ✓

WHEREAS, the United States alleges that the District failed to implement an appropriate safety plan for the evacuation of two students, referred to herein as J.F. and A.B., and further alleges that the failure to allow J.F. and A.B. to meaningfully participate in evacuation drills placed their health and safety in jeopardy, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35, in that such conduct: ✓

- a. excluded J.F. and A.B. who are individuals with disabilities, from participation in

and denied them the benefits of the services, programs or activities of a public entity;

- b. did not afford J.F. and A.B. 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. failed to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability.

WHEREAS, the District acknowledges that it failed to evacuate J.F. and A.B. from the New Rochelle High School ("NRHS") with the rest of the student body during an evacuation that occurred on January 31, 2013; the District also acknowledges that prior to January 31, 2013, it failed to ensure that J.F. and A.B. were evacuated from NRHS during some evacuation drills conducted for the NRHS student body;

WHEREAS, as a result of ongoing discussion, the United States and the District (collectively, the "parties") have reached agreement that it is in the parties' best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the parties agree to the entry of this Consent Decree without trial or adjudication of any issues of fact or law raised in the United States' Complaint;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of the 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 a declaratory judgment 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). The parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391.

2. 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) and 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.

3. J.F. is an 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.

4. A.B. is an 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.

INJUNCTIVE RELIEF

5. The District, by and through its officials, agents, employees, and all persons in active concert or participation with the District in the performance of its function as a public school district, shall not engage in any act or practice that: (i) excludes a disabled student from participating or benefitting from, or does not afford a disabled student an opportunity to participate in or benefit from the services, programs, or activities of a public entity that is equal to that afforded others; or (ii) fails to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of

disability in violation of Title II of the ADA. Specifically, the District shall (i) ensure that students with disabilities are able to meaningfully participate in evacuations – whether actual evacuations or drills – in compliance with 42 U.S.C. § 12132 and its implementing regulation, 28 C.F.R. Part 35, and (ii) upon the request of any student with a disability, make reasonable modifications to its policies, practices and procedures concerning the placement of such student in particular classrooms.

6. The District shall adopt and implement a policy stating that students with disabilities must have the opportunity to meaningfully participate in services, programs, or activities of a public entity that is equal to that afforded others, including but not limited to the opportunity to participate in evacuations – whether actual evacuations or drills – consistent with 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35 (the “Policy”). A copy of the Policy is annexed hereto as Exhibit A. The District shall adopt the Policy no later than August 5, 2014. ✓

7. The District will provide annual training to all District employees on Title II of the ADA regarding: (i) the duty to ensure that students with disabilities have the opportunity to participate in or benefit from the services, programs, or activities of the District that is equal to that afforded to others; and (ii) the duty to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability in violation of Title II of the ADA (“ADA Training”), according to the following schedule. Prior to the commencement of the 2014-2015 school year, the District will provide ADA Training to all District employees who have direct and daily interaction with students with disabilities, including but not limited to the administrators of each school within the District, ✓

teachers who have students with disabilities in their classrooms, aides of students with disabilities, and security personnel. In addition, no later than the first Superintendent's Conference Day, and, in any event, no later than October 31, 2014, the District will provide ADA Training for the 2014-2015 school year to all District employees, including contractors interacting with students, who did not otherwise receive ADA Training prior to the commencement of the school year. For subsequent school years, the District will provide ADA Training to all District employees, including contractors interacting with students, no later than the first Superintendent's Conference Day, and, in any event, no later than October 31st of each year. The District will provide ADA Training to all new District employees or contractors who interact with students on a daily basis within twenty (20 days) of the start of their employment with the District. The District shall ensure that such ADA Training is provided by an appropriately qualified expert concerning the scope and substance of such training. The District shall bear the cost of such expert.

8. The District shall adopt and implement individualized evacuation plans for all students with disabilities relating to mobility impairments attending the school in the District such that all such students have the opportunity to meaningfully participate in evacuations – whether actual evacuations or drills – conducted by the District. The District shall obtain and implement technical assistance from an appropriately qualified expert, who shall be approved by the United States as described below, concerning the components of such evacuations.

9. The District shall work in good faith with the United States Attorney's Office for the Southern District of New York ("SDNY") to select an appropriately qualified expert to provide technical assistance to the District concerning evacuation plans for students with

disabilities relating to mobility impairments attending school in the District (the "Plans").

Within ten (10) days of the entry of this Consent Decree, the District will provide the SDNY with

the names and curriculum vitae of three candidates who are appropriately qualified experts.

From these three candidates, the parties will work together in good faith to select, no later than twenty (20) days from the entry of this Consent Decree, an expert who will provide the District with the above-described technical advice concerning the Plans. The District shall provide such expert with drafts of its Plans and all other information requested by such expert in order to conduct an evaluation of such plans. Over the course of this Consent Decree, the District shall provide the expert with any proposed amendments to the Plans prior to their adoption and implementation. The District shall bear the cost of such expert.

ENFORCEMENT

10. The United States may review compliance with this Consent Decree at any time and may enforce this Consent Decree if the United States believes that the Consent Decree or any requirement thereof has been violated. If the United States believes that this Consent Decree or any portion of it has been violated, it will raise its concerns with the District and the parties will attempt to resolve the concerns in good faith. The United States will give the District thirty (30) days to cure the violation prior to instituting any court action, starting from the date that the United States notifies the District of any violation of this Consent Decree.

11. Failure by the United States to enforce any provision of this Consent Decree shall not be construed as a waiver of the United States' right to enforce that provision or any other provision of this Consent Decree.

12. This Consent Decree does not purport to remedy any other potential violations of

the ADA or any other law that is not specifically addressed herein, nor does it affect the District's continuing responsibility to comply with all aspects of the ADA. Nothing in this Consent

Decree releases or resolves any claims against the District for individual relief by any person, including but not limited to J.F. and A.B.

13. This Consent Decree shall remain in effect for three years from the effective date. ✓

The Court shall retain jurisdiction to enforce this Consent Decree. This Consent Decree will expire three years from the effective date.

14. The effective date of this Consent Decree is the date on which the Court enters this Consent Decree. ✓

15. This Consent Decree constitutes the entire agreement between the parties. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Consent Decree shall be enforceable. ✓

16. This Consent Decree shall be binding on the District, its agents and employees. ✓

17. The individuals signing this Consent Decree represent that they are authorized to bind the parties to this Consent Decree.

Dated: New York, New York
July 23, 2014

PREET BHARARA
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Southern District of New York
Attorney for the United States of America

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Dated: New York, New York
July 26, 2014

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By: *Brian Osborne*
Dr. Brian G. Osborne
Superintendent of Schools for the
City School District of New Rochelle

SO ORDERED:

Cathy Seibel
U.S.D.J. / ~~U.S.M.J.~~ *Cathy Seibel*

Dated: 7/24/13 White Plains, New York

The Clerk of Court is respectfully directed to close the case.

STATEMENT OF NON-DISCRIMINATION 1160

The City School District of the City of New Rochelle is committed to the principle of equal employment opportunity and to compliance with all federal, state and local laws concerning discrimination. To this end, the School District ensures equal opportunity, including the opportunity to meaningfully participate in services, programs, and activities, for all employees, applicants for employment and students regardless of race, color, creed, religion, national origin, political affiliation, sex, sexual orientation, age, (except where age is a bona fide occupational qualification of New York State or the specific position), marital status, veteran status, mental or physical or other disability, or use of a recognized guide dog, hearing dog or service dog. With respect to disabled students, the School District specifically ensures that (i) disabled students have the opportunity to meaningfully participate in the District's services, programs, and activities and that this opportunity is equal to that afforded others and includes, but is not limited to, the opportunity to participate in evacuations (including both actual evacuations and drills), consistent with 42 U.S.C. § 12132, and its implementing regulations, 28 C.F.R. Part 35, of the ADA, and (ii) upon the request of any student with a disability, the School District will make reasonable modifications to its policies, practices and procedures concerning the placement of such student in particular classrooms.

The Board of Education specifically prohibits all forms of discrimination by employees, school volunteers, students, and non-employees such as contractors and vendors as well as any third parties who are participating in, observing, or otherwise engaging in activities subject to the supervision and control of the District.

The policy of equal opportunity and meaningful participation applies to all educational programs, activities and services. This policy also applies to all employment practices including but not limited to hiring (or failure or refusal to hire), training, job assignment, tenure, promotion, layoff, transfer, termination, compensation, benefits, working conditions and other obligations and privileges of employment.

The Superintendent of Schools shall designate one or more employees as Compliance Officer(s) whose responsibility will be to ensure compliance with the various federal and state statutes and regulations prohibiting discrimination in

educational programs, including Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act (ADA).

Equal opportunity is not only consistent with good business practices, but more importantly, it is a moral concern and obligation for each of us and for the District as a whole.