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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOBEL LEARNING COMMUNITIES d/b/a
CHESTERBROOK ACADEMY,

Defendant.

Case No. 17-cv-_____

COMPLAINT

Plaintiff, the United States of America, brings this civil action against Defendant Nobel Learning Communities (“NLC” or Defendant”) d/b/a Chesterbrook Academy and alleges as follows:

NATURE OF ACTION

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 Nobel Learning Communities (“NLC”). Defendant owns and operates a facility known as the Chesterbrook Academy (“Chesterbrook”), located in Moorestown, New Jersey. Defendant violated the ADA by discriminating against M.M. on the basis of a disability by: 1) failing to make reasonable modifications to policies,

practices, or procedures for a child, M.M., who has Down syndrome, a chromosomal disorder that leads to impairments in both cognitive ability and physical growth; 2) expelling M.M. from Chesterbrook due to M.M.'s disability; and 3) excluding or otherwise denying equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to M.M.'s parents because of the known disability of M.M.

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. The United States seeks declaratory 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 District of New Jersey pursuant to 28 U.S.C. § 1391(b)(1) because Chesterbrook is a private pre-school operating in this district. Venue is further proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

PARTIES

5. Plaintiff is the United States of America.

6. Defendant NLC is a Delaware corporation with its principal place of business at 1615 West Chester Pike, West Chester, PA 19382. Defendant owns and operates Chesterbrook, located at 130 Borton Landing Road, Moorsetown, New Jersey 08057.

FACTS

7. Defendant is a private for-profit Delaware corporation that operates over 180 private schools throughout the United States, including approximately nine in New Jersey. NLC schools offer a private pre-school through 12th grade education.

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

9. Chesterbrook, which is owned and operated by Defendant, specifically offers day care and an educational foundation program from six-weeks old through kindergarten. Chesterbrook offers five pre-school programs prior to a child entering kindergarten: “Infants,” “Toddlers,” “Beginners” (ages 2-3), “Intermediates” (ages 3-4), and “Pre-K.”

10. M.M. was born on July 11, 2011 with Down syndrome.

11. Children with Down syndrome typically have developmental delays, including delays in toileting.

12. M.M. was first enrolled at Chesterbrook on January 5, 2012.

13. At the time of M.M.’s enrollment, Chesterbrook was aware that M.M. had and would continue to have developmental delays.

14. Chesterbrook provides diaper changing services to children enrolled in all of its programs, except to children in the “Intermediates” and “Pre-K” programs.

15. The “Beginner” classroom is located approximately 20 to 30 feet from the “Intermediate” classroom. Chesterbrook provides diaper changing services within the “Beginner” classroom.

16. In some instances, where children still in diapers were age appropriate for the “Intermediate” program, Chesterbrook nonetheless kept some of those children in the “Beginner”

program so that diapering services could be provided. In other instances, Chesterbrook moved children still in diapers into the “Intermediate” program because the child’s level of cognitive development. For the children still in diapers in the “Intermediate” program, Chesterbrook provided diapering services in nearby areas where Chesterbrook provided diapering services for younger children.

17. According to the Chesterbrook Academy Parent Handbook, “Children are placed according to developmental progress and may continue in a placement or repeat that placement if their developmental needs warrant such a decision.”

18. On or about December 2014, Chesterbrook informed M.M.’s parents that it planned to move M.M. into the “Intermediate” program. In response, M.M.’s parents expressed concerns, mostly because M.M. still required diapers due to her developmental delays. M.M.’s parents, therefore, suggested that M.M. be kept in the “Beginner” program. Chesterbrook personnel, however, stated it would go forward with its plan to move M.M. into the “Intermediate” program and assured M.M.’s parents that M.M. was appropriately placed and that Chesterbrook personnel would work with M.M. on becoming toilet trained.

19. On January 21, 2015, shortly after M.M. entered the “Intermediate” program, Chesterbrook Principal Kelly Honer sent an email to M.M.’s mother stating:

We are really going to work on getting [M.M.] potty trained ... Since [M.M.] is in a non-diapering classroom we need to set a time frame... I was thinking about April 1st? [It is] corporate policy I have to set a time frame to get [M.M.] potty trained.

20. After receiving the January 21, 2015 email, M.M.’s parents provided literature to Chesterbrook about delayed toilet training in children with Down syndrome.

21. On March 26, 2015, Chesterbrook informed M.M.’s parents that it was expelling M.M. from Chesterbrook, effective April 1, 2015, because M.M. was not toilet trained.

22. Before receiving notification of expulsion on March 26, 2015, M.M.'s parents never received any indication, written or otherwise, that the question of "April 1st?" was the deadline for either M.M. becoming toilet trained or being expelled from the school.

23. Subsequent to this five-day notice of expulsion, M.M.'s parents made several attempts to maintain M.M.'s enrollment at Chesterbrook. M.M.'s mother appealed in writing to the Executive Director of NLC and provided a doctor's note from M.M.'s physician concerning M.M.'s delayed toilet training. M.M.'s mother requested that M.M. be placed back into the "Beginner" program due to developmental needs.

24. Refusing the parents' requests, Defendant expelled M.M. from Chesterbrook due to M.M.'s disability. M.M.'s last day at Chesterbrook was March 31, 2015.

25. M.M. and M.M.'s parents were denied a full and equal opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Chesterbrook.

26. M.M. and M.M.'s parents were denied the services offered by Chesterbrook that are readily available to parents of other children without disabilities.

27. Defendant's discrimination caused M.M. and M.M.'s parents to feel stigmatized and mistreated, causing them anxiety, inconvenience, emotional pain and anguish.

CAUSE OF ACTION

Title III of the Americans with Disabilities Act

28. The allegations of paragraphs 1 through 27 are hereby re-alleged and incorporated by reference as if fully stated herein.

29. NLC discriminated against individuals 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 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) and its implementing regulation at 28 C.F.R. § 36.302;
- (b) Expelling M.M. from Chesterbrook on the basis of disability, which constitutes a denial of opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations in violation of and entity in violation of 42 U.S.C. § 12182(b)(1)(A) and its implementing regulation at 28 C.F.R. § 36.302; and
- (c) Excluding or otherwise denying equal goods, services, facilities, privileges, advantages, or accommodations to M.M. and M.M.'s parents because of the known disability in violation of 42 U.S.C. § 12182(b)(1)(E) and its implementing regulation at 28 C.F.R. § 36.205.
- (d) Individuals were aggrieved by Defendant's discriminatory actions. 28 C.F.R. § 36.504(a)(2).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff United States prays that the Court:

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


B. Enjoin Defendant, its officers, agents, employees and all others in concert or other in 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 at 28 C.F.R. Part 36;

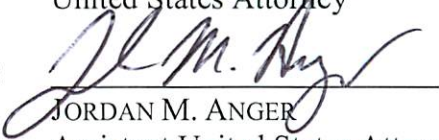
C. Award compensatory damages to aggrieved individuals, including damages for pain, suffering and emotional distress to M.M. and M.M.'s parents, who are persons aggrieved due to Defendant's violations of the ADA, 42 U.S.C. §§ 12181-89 and its implementing regulation at 28 C.F.R. Part 36.

E. 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

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

Dated: 11-08, 2016

By: 
VANITA GUPTA
Principal Deputy Assistant Attorney
General
Civil Rights Division

PAUL J. FISHMAN
United States Attorney
By: 
JORDAN M. ANGER
Assistant United States Attorney