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

I.S., individually, and I.S. on behalf of E.S.,

Plaintiffs,

v.

SPRINGFIELD BOARD OF EDUCATION,

Defendant.

Civil Action No.:

VERIFIED COMPLAINT

Plaintiffs, I.S., individually, and I.S. on behalf of E.S., hereby allege as follows:

JURISDICTION

1. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(4) and 42 U.S.C. § 1983 and supplemental jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367.

VENUE

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Defendant resides and the acts and omissions giving rise to Plaintiffs' claims occurred herein.

PARTIES

3. Plaintiff I.S. is the parent of E.S.
4. Plaintiff E.S. is a nine-year-old child entitled under the constitution and laws of the State of New Jersey to attend the Springfield Public Schools.
5. E.S. is a “qualified individual with a disability” as that term is defined under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131, and their implementing regulations, respectively at 34 C.F.R. § 104.3 and 28 C.F.R. § 35.108.
6. I.S. and E.S. reside within the Springfield School District (“the District”).
7. Defendant Springfield Board of Education (“the Board”) is a body corporate established under the laws of New Jersey responsible for the conduct and supervision of the Springfield Public Schools.
8. The District is a recipient of federal financial assistance from the United States Department of Education subject to Section 504, a “public entity” subject to Title II of the ADA under 42 U.S.C. § 12131, *et seq.*, and “a place of public accommodation” under the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-5.

FACTS

9. E.S. has attended District schools since preschool.
10. She has attended Thelma L. Sandmeier Elementary School (“Sandmeier”), which is about a block away from her home, since last year, her third grade.
11. Her younger brother, who is eight years old, also attends Sandmeier.

12. E.S. knows most of the neighborhood children who attend Sandmeier and many of the teachers, including those who teach specials (art, music, health and physical education) at her school.
13. Up until last year, E.S. has not had any problems in school.
14. She was always an excellent student with a very positive outlook on life and healthy relationships with her peers and teachers.
15. Last year, however, during third grade, E.S. was bullied by several peers in her class.
16. This began with two girls, but eventually included two more girls who were “recruited” for “greater impact.”
17. Throughout the course of the year, these girls tormented E.S. making fun of her physical appearance, calling her names, taking away her school supplies, disturbing her while she worked in class and encouraging other students not to be her friend.
18. Teasing included comments about a birthmark on her leg, which led her to stop wearing anything that would reveal the mark and to wear long pants regardless of the weather.
19. The teasing made it difficult for her to focus in class or complete her work on time.
20. She asked the teacher for help in dealing with the students, but the teacher merely told her that she is a “a smart girl and can handle it herself.”
21. After that, she did not ask for assistance again, or tell anyone, including I.S., fearing it would be futile and only make matters worse.
22. The bullying continued through the end of the school year.
23. Over the summer, E.S. gradually told I.S. about the bullying, but only with the assurance that she would not report it to the school for fear that it would make things worse.

24. E.S. was anxious to put the experience behind her.
25. She had a good summer and by the end was looking forward to a fresh start in school in the new academic year with a new set of peers and teacher.
26. For these reasons, I.S., initially, did not report the bullying to the school.
27. About a week before the new school year began, I.S. and E.S. learned that E.S. was assigned for fourth grade to the same class, with the same teacher and same students as the previous school year.
28. This was based on a practice referred to as “looping” in which students in a class one year are reassigned altogether to the same class with the same teacher for the following year.
29. When E.S. learned of this, she became very upset and told I.S. that she did not know how she survived the year before, that it was “pure torture,” and she did not believe she could bear it again.
30. She asked to be taken to a plastic surgeon to have her birthmark removed to avoid the bullying endured the previous year.
31. Based on E.S.’s response to the prospect of spending another year in the same class as the group of girls who tormented her the previous year, I.S. became very concerned that the experience had seriously harmed her psychologically and emotionally.
32. I.S. immediately scheduled an appointment with the Principal, Michael Plias, on September 6, 2017, the day before the new school year was to begin.
33. She explained in detail what E.S. told her about the bullying the year before and requested that her class be changed to any one of four other fourth-grade classes at Sandmeier.

34. Despite the information shared, Plias flatly refused to change her class.
35. Unrelated to E.S. and I.S., a group of parents had objected privately and publicly regarding E.S.'s teacher and the District's looping policy.
36. Plias and the District had become very defensive of E.S.'s teacher and the District's looping practice.
37. I.S. was not involved with that group nor had she ever complained about E.S.'s teacher, except as mentioned above regarding her response to E.S.'s complaint about the bullying.
38. However, Plias was dead set on denying any request to change the classroom assignment of any child in E.S.'s class; consequently, he rejected I.S.'s request without considering E.S.'s individual circumstances.
39. Plias recommend only that I.S. file a complaint of harassment, intimidation and bullying ("HIB"), and he did not offer to do anything else to address I.S.'s concern regarding E.S.'s wellbeing.
40. Later that day, I.S. did submit a bullying complaint as recommended.
41. E.S. started school on September 7, 2017 back in the same class with the same teacher and same four students who bullied her the year before.
42. Despite E.S.'s protests, I.S. sent her to school believing that it was important that she attend and hoping that the Principal would eventually accommodate her needs by granting the requested change of her classroom.
43. E.S.'s emotional and physical condition deteriorated, and she resisted going to school.
44. I.S. took her to see to see a private counselor, Robin Gershon-Halpern, MA, Ed.M., NCC, LPC.

45. She also took her to see her pediatrician, Dr. Sandra Voremberg, because she developed a loss of appetite, headaches, stomach pains and insomnia.
46. I.S. also communicated with Plias during this time about the difficulty E.S. was having emotionally.
47. On September 20, 2017, Plias advised I.S. that the school had completed its “investigation” of the complaint, but failed to substantiate bullying because of undisclosed discrepancies in the accounts of individuals involved.
48. As a result, E.S.’s class would not be changed.
49. I.S. told Plias that she could not continue to force E.S. to attend class with the students who bullied her last year and she would not send her to school until she was reassigned to another class.
50. A written report of the investigation was produced, but it offered no explanation of the basis for its conclusion except for the general statement that “the case has been deemed unsubstantiated” for failure to meet HIB criteria under State law.
51. On September 28, 2017, Dr. Voremberg wrote a letter for the school indicating that she had seen E.S. that day “for headaches, stomachaches and school refusal.”
52. She also noted that E.S. “is not eating well, and is losing weight,” and that she was “having trouble falling and staying asleep.”
53. She concluded that E.S. “has developed school refusal with anxiety and stress symptoms, which are significantly and adversely affecting her mental and physical health. These symptoms are specific to her school placement and experience.”

54. She offered the opinion that “it is medically necessary to change [E.S.]’s classroom assignment immediately, to protect her from ongoing bullying, and allow her to pursue her education.”
55. On September 29, 2017, I.S. and Gershon-Halpern met to discuss E.S. situation with Plias, Bonnie Loew, Sandmeier’s School Counselor, and Tiffany Boehm, the District’s Director of Student Support.
56. I.S. shared Dr. Voremberg’s letter and Gershon-Halpern communicated verbally her similar findings and recommendations based on her independent assessment of E.S.
57. I.S. hoped that they would work out a plan for E.S.’s return to school and assignment to another class, but Plias remained adamantly against changing E.S.’s classroom explaining simply that “school placements are final.”
58. He indicated that he believed that it would be sufficient for Loew and Gershon-Halpern to help E.S. develop coping skills.
59. Despite the concerns of E.S.’s doctor and private therapist, the District did not initiate any evaluation of E.S. to determine if she required any accommodations or services to address her school-related anxiety and stress.
60. Plias did offer E.S. Home Instruction, but, as it would turn out, that did not start for another five weeks, until November 1, 2017, at least in part because the District’s doctor did not even reach out to Dr. Voremberg (as required by the District before Home Instruction could begin) until October 23, 2017.
61. Over several sessions with E.S., Gershon-Halpern completed an assessment of her, which included administration of the School Refusal Assessment Scale-Revised.

62. She reported in a letter dated October 5, 2017, that she found that E.S. had “developed anxiety and depression as a result of reported bullying” that occurred during the previous school year, and that “[h]er anxious symptoms were triggered by and markedly exacerbated when her class was looped this year and she was forced to start another school year with the same classmates and the same teacher.”
63. She recommended, “[t]o prevent further deterioration in [E.S.]’s mental status,” that she “be placed as soon as possible in a new classroom.”
64. This letter was shared with Plias, but he still refused to change E.S.’s class, and he took no action to assess or otherwise address her mental-health related educational needs.
65. Consequently, E.S. remained at home, without instruction, and she would not receive any instruction until Home Instruction began on November 1.
66. Frustrated by the school and District’s disregard of E.S.’s complaint of and emotional response to the bullying of the previous year, as well of her concerns and the recommendations of E.S.’s therapist and doctor, I.S. retained the undersigned attorney and disclosed what was happening to local media outlets.
67. On October 18, 2017, the undersigned wrote a letter to the District’s Superintendent, Michael Davino, in which he summarized the history set forth above and requested that E.S. be reassigned to another fourth-grade class at Sandmeier.
68. On or about October 18, Channel 11 and the Springfield Patch ran stories on television and the internet about what was happening to E.S., and other news outlets ran the story as well.
69. On October 19, 2017, Dr. Voremberg wrote another letter that I.S. shared that not only with Plias, but also with Superintendent Davino.

70. In that letter, Dr. Voremberg reported, based on a follow-up visit, that E.S. “continues to suffer from Anxiety, headaches and stomachaches” and that she was “referred for a Child Psychiatry consult.”
71. She again recommended that “her classroom assignment be changed” and also that “she be given home instruction right away.”
72. Neither I.S. nor the undersigned received a response to his October 18 letter or Dr. Voremberg’s October 19 letter.
73. Instead, Davino responded to the “recent news reports” in a letter sent to all families in the District (and which was shared with the press) in which he disclosed confidential and inaccurate information about E.S. and I.S. and misinformation about the school and District’s response to their complaints and requests and the findings and recommendations of E.S.’s therapist and doctor.
74. A week later, on October 25, the undersigned wrote another letter requesting copies of E.S.’s school records, including records related to her bullying complaint and investigation, but to date, even though parents are entitled to access to such records within 10 days under federal and State student records laws and the New Jersey Open Public Records Act, the records have been withheld from the Plaintiffs.
75. On October 26, 2017, I.S. took E.S. to see Richard M. Di Turi, M.D., for a psychiatric evaluation, which he completed over a period of about three hours.
76. Dr. Di Turi summarized his findings in a written report to the school on that day.
77. He indicated that he had diagnosed E.S. with a Major Depressive Disorder and Specific Phobia.
78. He explained:

[E.S.] is having severe anxiety with physical and mental symptoms centered on fear on her current classroom setting. This is leading to a pervasive sense of anxiety and worry even when not in the school setting with subsequent school absences and development of depressive symptoms affecting her mood, sleep, appetite, concentration, self esteem and physical status. These mood and anxiety symptoms have persisted despite her not being in school for the past six weeks even with her receiving psychotherapy.

79. He offered the following recommendations:

It is my professional opinion that [E.S.] requires home instruction at this point for a minimum duration of thirty days unless an alternative academic plan can be put in to place sooner. Based on my interview with [E.S.], it appears that she may greatly benefit from a switch to a different classroom setting in the same school. I respectfully request that [E.S.] be permitted to be placed in a different class as soon as possible. This would be expected to prevent further exacerbation of her mood and anxiety symptoms and allow her to function to the best of her academic ability.

80. The undersigned's October 25 records request did prompt a call on October 26, 2017 from the Board's attorney, Kerri Wright.
81. She did not reach the undersigned, but left a message for him to return her call.
82. As he was not able to reach her that day, and given the urgency of the situation, he emailed to her on October 27, 2017, Dr. Di Turi's report.
83. He advised her that based on her discussions with Dr. Di Turi and E.S.'s therapist, I.S. "would like [E.S.] – if possible – to start in a new class as soon as possible."
84. Wright and the undersigned spoke on October 30, 2017.
85. At that point, Wright indicated that the District might support the development of a "504 Accommodation Plan" for E.S. based on Dr. Di Turi's letter, but first the District would like to have its own psychiatrist evaluate E.S.
86. On October 31, 2017, the undersigned advised Wright by email that I.S. was concerned by the District's wish to evaluate E.S. because she had already been interviewed about

her situation many times by the Principal, the Anti-Bullying Specialist, her pediatrician, her therapist, and Dr. Di Turi, and each time it was upsetting for E.S.

87. He also advised her that I.S. was requesting that the District consider the impact of another evaluation on E.S. and whether it would suffice for the District's psychiatrist to just speak with Dr. Di Turi.

88. On November 2, 2017, Wright replied by email:

We are uncertain that the physicians noted would be comfortable with this type of review/opinion, without evaluating the child themselves. However, the delay has been in our effort to accommodate the parent's request. We are attempting to get feedback from these physicians as to whether this would be acceptable. This would have to come with the caveat, however, that if the individual speaks with Dr. Di Turi and still feels an evaluation is necessary that we would be seeking your client's cooperation.

In addition, we would need to send the physician the full file for [E.S.] in order for such an alternate review to be effective. Would you be able to send that to me?

If we can secure confirmation from one of these physicians as above, please confirm this would be acceptable.

89. The undersigned replied later that day:

[I.S.] understands the potential that the psychiatrist retained by the District might in end still conclude that he needs to see [E.S.] in order to offer an opinion.

She also is okay with [E.S.]'s "full file" being shared.

90. That evening, the undersigned spoke to Wright regarding arrangements needed to authorize Di Turi to release information to and communicate with the District's psychiatrist (identified as Dale Jacobs, M.D.)

91. During that call, Wright advised the undersigned that it was anticipated that the District might agree to a change in E.S.'s class, but, in light of statements made to the media

(the Patch had run a follow-up story on the evening of November 1) and opinions of her therapist and doctors, the District would not place her in another class at Sandmeier.

92. Instead, she said, it would transfer her to another school, James Caldwell Elementary School (“Caldwell”), which is about a two-mile drive from I.S.’s home.
93. The undersigned advised Wright that he would convey this information to I.S. and get back to her if she objected to the transfer.
94. As Wright was not available later by telephone, the undersigned emailed her later that evening about the arrangements being made for the doctors to communicate on the following day and advising her that I.S. would disagree to any plan to transfer E.S. from Sandmeier to Caldwell.
95. He also encouraged the District to have the doctors discuss a potential plan for E.S. to return to Sandmeier.
96. I.S. made the arrangements for Dr. Di Turi to be available to communicate with Dr. Jacobs on November 3, 2017, but the District never had Dr. Jacobs call Dr. Di Turi.
97. Instead, without conducting an individualized assessment of E.S. or communicating directly with Dr. Di Turi, the District decided to involuntarily remove E.S. from Sandmeier and transfer her to Caldwell, apparently, in retaliation for I.S.’s communication with the press.
98. On November 6, 2017, Wright sent an email to the undersigned in which she conveyed the District’s rejection of I.S.’s request that E.S. not be removed from Sandmeier as follows:

As you and I discussed when we spoke last week, we are ready to return her to school this week, however, we are unable to accommodate the parents’ request to return her to the Sandmeier School. This is as a direct result of what we have learned through

[E.S.]’s statements to the media as well as the reports from the various physicians who have evaluated or worked with [E.S.]

....

Unfortunately, while we could have -- and were prepared to -- make more than adequate accommodations for return to her previously assigned classroom (such as, as you suggest below, a plan to help her transition back, ensure that no bullying happens after her return, monitor her progress, ensure there is someone with whom she feels comfortable who she can go to if anything happens or if she feels uncomfortable for any reason, and appropriately respond to anything that might occur) your clients’ media exploits have made that an unacceptable option. As a result of the repeated news reports and interviews, every student in her class is aware of [E.S.]’s claims. The District has been faced with a number of inquiries and complaints from the parents of other students in her class. Therefore, as a result, the District must respectfully decline the parents’ request to put [E.S.] back into that school. No one, including her doctors, can insure that she will be safe from psychological or emotional harm if she returns to that school.

99. As mentioned above, the Patch had run a follow-up story on the evening of November 1, 2017, which infuriated Davino.
100. At a public Board meeting on November 6, 2017, he went on a tirade against E.S. and I.S., including complaints about the negative media attention received, untruthful and disparaging remarks about I.S. and E.S. and confidential information protected from disclosure by the District under State and federal laws and regulations.
101. He even published his remarks about I.S. and E.S. in writing on the District’s website.
102. Hence, it is clear that the District’s refusal to reassign E.S. to another class at Sandmeier as recommended by three outside medical and mental health professionals was motivated by its efforts to defend its looping policy and retaliation against I.S. for speaking to the press rather than E.S.’s individual psychological and educational needs.

103. By refusing to reassign E.S. to another class, the District has aggravated her depression and anxiety and caused her to miss months of school.
104. If she were now removed from Sandmeier and involuntarily transferred to Caldwell as a result of the bullying she suffered, it would not only disrupt her education further, it would punish her for having complained of her bullying rather than continue to suffer in silence.

FIRST COUNT

(DISCRIMINATION - TITLE II OF THE ADA AND SECTION 504)

105. Plaintiffs incorporate by reference paragraphs 1-104, above, as if fully set forth herein.
106. By denying I.S.'s request that it reassign E.S. to another fourth-grade class at Sandmeier to accommodate her anxiety and depression, the District has discriminated against E.S. in violation of Title II of the ADA and Section 504 by failing to provide her reasonable accommodations required to afford her meaningful access to her neighborhood school.
107. By excluding E.S. from Sandmeier because of her presumed psychological vulnerability stemming from an actual or perceived disability, without making an individualized assessment of any risk posed by her attendance at Sandmeier, the District has discriminated against E.S. in violation of Title II of the ADA and Section 504.
108. In discriminating against E.S. as described above, school officials have demonstrated bad faith and gross misjudgment which constitutes deliberate indifference.

109. As a result of said discrimination, E.S. has suffered loss of education and emotional harm and I.S. has incurred costs of medical and mental health evaluations and treatment.
110. Unless the District is enjoined from denying Plaintiffs' request for reassignment to another fourth-grade class at Sandmeier and excluding E.S. from Sandmeier, she will continue to suffer such discrimination.
111. Plaintiffs are, therefore, entitled to such injunctive relief, general damages for the loss of education and emotional harm and special damages for costs of evaluations and treatment.

SECOND COUNT

(DISCRIMINATION – NJLAD)

112. Plaintiffs incorporate by reference paragraphs 1-111, above, as if fully set forth herein.
113. By denying I.S.'s request that it reassign E.S. to another fourth-grade class at Sandmeier to accommodate her anxiety and depression, the District has discriminated against E.S. in violation of the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-4, by failing to provide her reasonable accommodations required to afford her meaningful access to her neighborhood school.
114. By excluding E.S. from Sandmeier because of her presumed psychological vulnerability stemming from an actual disability or perceived disability, without making an individualized assessment, the District has discriminated against E.S. in violation of NJLAD.

115. As a result of said discrimination, E.S. has suffered loss of education and emotional harm and I.S. has incurred costs of medical and mental health evaluations and treatment.

116. Consequently, Plaintiffs are entitled to general damages and special damages for the incurred costs of evaluations and treatment.

117. Because the actions of the Superintendent and other school officials were especially egregious in their wanton and willful disregard of the educational and psychological wellbeing of E.S. and their legal obligations and because they were motivated by retaliation and spite, Plaintiffs are also entitled to punitive damages.

THIRD COUNT

(RETALIATION –SECTION 1983 – FIRST AMENDMENT)

118. Plaintiffs incorporate by reference paragraphs 1-117, above, as if fully set forth herein.

119. By denying Plaintiffs' request for E.S.'s reassignment to another fourth-grade class at Sandmeier and excluding her from Sandmeier solely or at least in part because of Plaintiffs' airing their grievances about the District's response to their complaints and concerns to the press, the District has violated their First Amendment rights.

120. As a result of said retaliation, E.S. has suffered loss of education and emotional harm and I.S. has incurred costs of medical and mental health evaluations and treatment.

121. Unless the District is enjoined from denying Plaintiffs' request for reassignment to another fourth-grade class at Sandmeier and excluding E.S. from Sandmeier, she will continue to suffer retaliation in violation of Plaintiffs' First Amendment rights.

122. Plaintiffs are, therefore, entitled to such injunctive relief, general damages for the loss of education and emotional harm and special damages for costs of evaluations and treatment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby demand the following relief:

- A. Judgment in favor of Plaintiffs declaring that the Board has violated their rights as set forth above;
- B. A preliminary injunction prohibiting the District from excluding E.S. from Sandmeier and directing it to reassign her to another fourth-grade class there;
- C. An order awarding Plaintiffs general, special and punitive damages;
- D. An award of reasonable attorneys' fees and costs; and
- E. Such other relief as is just and appropriate.

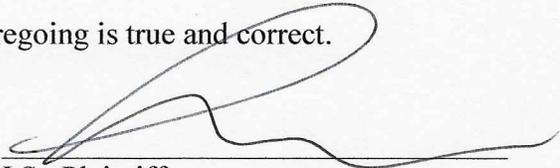
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Dated: November 14, 2017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2017


I.S., Plaintiff