

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**SARAH BARBER, AS NEXT FRIEND OF J.B.,  
A MINOR**

**PETITIONERS,**

**VS.**

**CAUSE NO. 3:20-cv-159-CWR-LRA**

**PEARL PUBLIC SCHOOL DISTRICT**

**RESPONDENTS.**

**PETITION FOR PERMANENT INJUNCTIVE RELIEF AND DECLARATORY  
JUDGMENT UNDER THE INDIVIDUALS WITH DISABILITIES IN EDUCATION  
ACT (IDEA) & MISS. CODE ANN. § 37-11-57 AGAINST THE PEARL PUBLIC  
SCHOOL DISTRICT  
(INJUNCTIVE RELIEF REQUESTED)**

**COME NOW**, Petitioners, SARAH BARBER, as next friend of J.B., a minor, by and through counsel, to file this, their **PETITION FOR PERMANENT INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT UNDER THE INDIVIDUALS WITH DISABILITIES IN EDUCATION ACT (IDEA) & MISS. CODE ANN. § 37-11-57 AGAINST THE PEARL PUBLIC SCHOOL DISTRICT**, pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and in support thereof, Petitioner would show unto the Court, the following:

**INTRODUCTION**

1. This is an action for injunctive, declaratory, and equitable relief. Petitioners J.B. and SARAH BARBER, (known collectively as “Petitioners”) seek to invalidate the actions of the Pearl Public School District (known collectively as “Respondents”). Respondents’ sent home waivers for corporal punishment to all parents with students enrolled in Pearl Public School District schools; this included students with disabilities under the Individuals with Disabilities in Education Act (IDEA) and the Rehabilitation Act of 1973. This Complaint seeks to undo

Respondents' actions. Petitioners ask that this Court permanently enjoin the Respondents from requesting waivers for corporal punishment because this action is unlawful under Mississippi Code Annotated Section 37-11-57(3).

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S. C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, because this claim seeks to declare the rights and other legal relations of the Petitioners under federal and state law. This Court has supplemental jurisdiction in this matter over all other state claims that are so related to claims in this action within such original jurisdiction that they form part of the same case or controversy pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court under either § 1391 (b)(1) or (b)(3) and its sister subsections (c)(1) and (c)(2), respectively; because the collective Respondents are all residents of the State of Mississippi, venue is proper, because all are residents of the State of Mississippi, and the locus of contacts occurred within this State, this Court has personal jurisdiction of the collective Respondents.

### **PARTIES**

4. Parent, SARAH BARBER, as Next Friend of J.B., a minor, has standing to challenge the Pearl Public School District's action because the request for the waiver is unlawful. Parents may challenge school actions when those actions directly affect the school children and their parents.<sup>1</sup>

5. The Pearl Public School District ("District") and its agents are the Respondents in this lawsuit. The District is a political subdivision of Mississippi and a local educational agency.

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<sup>1</sup> *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 283 n.7 (5th Cir. 2001).

The District is located within Rankin County, operating wholly within the Northern Division of the Southern District of Mississippi. The District may be served with process upon Raymond C. Morgigno, Superintendent of Pearl Public School District, at 3375 Highway 80 East, Pearl, Mississippi 39208.

### **FACTS AND PROCEDURAL HISTORY**

#### **I. Pearl Public School District requested waivers for corporal punishment from parents of students with a disability.**

6. At the start of the 2019-2020 school year, Pearl Public School District (“the District”) sent home waivers for corporal punishment to all parents with students enrolled in these schools, including students with disabilities under the Individuals with Disabilities in Education Act (IDEA) and the Rehabilitation Act of 1973.

#### **II. The requested waivers are unlawful under the IDEA and the Rehabilitation Act.**

7. The requested waivers do not comport with certain amendments to Mississippi Code Annotated Section 37-11-57(3), which went into effect on July 1, 2019. This section expressly prohibits teachers, assistant teachers, assistant principals, principals, and other school personnel from using corporal punishment on children with IEPs under IDEA or 504 plans under the Rehabilitation Act of 1973.

8. Furthermore, if any of the above listed individuals were to use corporal punishment on a student with an IEP or 504 Plan, that individual is not granted immunity from liability under Mississippi Code Annotated Section 37-11-57(2).

9. Therefore, it is unlawful for the District to request waivers for corporal punishment from parents of students with a disability. Additionally, neither the wording of this statute nor the wording of any of the provisions of IDEA or the Rehabilitation Act grant an exception that allows waivers for students with disabilities; the exception does not exist in any

federal statute. Even if a parent/guardian of a child with an IEP or 504 plan consents to allowing corporal punishment to be administered to that child, such discipline is still prohibited by the state and federal law. In other words, a parent has no authority to consent to the use of corporal punishment on their disabled child because the practice itself is a violation. Therefore, the District and any school personnel who are involved in the administration of such a punishment must be subject to liability for their actions.

**COUNT ONE: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION UNDER IDEA LAW**

10. The requested waiver violates IDEA law because an individualized educational program (IEP) must be individually tailored to meet the particular needs of the child based on their disability. 34 C.F.R. § 300.320. A waiver defeats the purpose of an individualized plan by failing to consider the child's disability and particular needs. Instead of tailoring to disabled students' individual needs, the waiver is an attempt to implement a blanket rule that overtly ignores the child's disability and individualized needs. Therefore, the waiver violates IDEA regulations and is contrary to the spirit of the IDEA.

11. Parents cannot consent to corporal punishment through a waiver. Even if the parent were able to waive their right, this current waiver would still violate the procedural safeguards. The decision to use corporal punishment on a child with a disability would have to be decided by the IEP committee and included as part of the child's IEP. 34 C.F.R. § 300.324. Furthermore, the development of the IEP of children whose behavior impedes the child's learning must include appropriate positive behavioral interventions and supports and other strategies as opposed to using corporal punishment. 34 C.F.R. § 300.324(a)(2)(i).

12. By reason of the foregoing, Petitioner seeks injunctive relief under 34 C.F.R. § 300.320 & 34 C.F.R. § 300.324.

**COUNT TWO: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION UNDER MISS. CODE ANN. § 37-11-57(3)**

13. This Petition results from Respondents' action of sending waivers for corporal punishment to homes of children with disabilities under the IDEA and the Rehabilitation Act of 1973. Such waivers, however, do not comport with certain amendments to Mississippi Code Annotated Section 37-11-57(3), which went into effect on July 1, 2019. This section expressly prohibits teachers, assistant teachers, assistant principals, principals, and other school personnel from using corporal punishment on children with IEPs under IDEA or 504 Plans under the Rehabilitation Act of 1973. Furthermore, if any of the above listed individuals were to use corporal punishment on a student with an IEP or 504 Plan, that individual is not granted immunity and therefore subject to liability under subsection two (2) of this section of the code.

14. Petitioners contend that it is unlawful for the District to request waivers for corporal punishment from parents of students with a disability. Additionally, neither the wording of this statute nor the any of the provisions of IDEA or the Rehabilitation Act grant an exception for waivers. Petitioners contend that even if a parent/guardian of a child with an IEP or 504 plan consents to allowing corporal punishment to be administered to that child, such discipline is still prohibited by the state and federal law. Therefore, the District and any school personnel who are involved in the administration of such a punishment must be subject to liability for their actions.

15. Petitioners contend that this violation warrants the following relief: (1) declaratory judgment from this Court that determines that under Miss. Code Ann. § 37-11-57 the Respondents are in violation of IDEA and Rehabilitation Act of 1973; and (2) permanent injunction on Respondents' actions from distributing consent forms for corporal punishment to parents or guardians of children with IEPs or 504 plans and rescind the consent forms that have already been distributed.

16. By reason of the foregoing, Petitioner seeks injunctive relief under Miss. Code Ann. § 37-11-57, 34 C.F.R. § 300.320, and 34 C.F.R. § 300.324.

**LEGAL STANDARD/RELIEF SOUGHT**

17. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Petitioner seeks permanent injunctive relief enjoining and prohibiting Respondents' actions of distributing consent forms for corporal punishment to parents or guardians of children with IEPs or 504 plans in the Pearl Public School District.

18. Rule 65 of the Federal Rules of Civil Procedure provides for issuance of injunctive relief. Fed. R. Civ. P. 65(d). An application for an injunction must be established by (1) state the reasons why it should be issued, (2) state its terms specifically, and (3) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required. Moreover, to bind the Respondents to an injunction, the order only the following who receive actual notice of it by personal service or otherwise; (1) the parties . . . (3) other persons who are in active concern or participation with any one described with the parties.

19. Petitioners have been wrongfully asked for consent to corporal punishment. Because of these actions, Respondents are in violation of federal regulations under the IDEA and the Rehabilitation Act of 1973.

20. That as set forth above, Petitioners assert that there is a substantial likelihood of success, that the entry of an injunction will prevent irreparable harm to them without adequate remedy at law, that the benefit to Petitioners far outweigh any potential harm to Respondents and that the entry of an injunction is in the public's interest.

21. That Respondents should be temporarily, preliminarily, and permanently enjoined from distributing waivers for corporal punishment to parents of students with disabilities under the IDEA and the Rehabilitation Act of 1973 and Miss. Code Ann. § 37-11-57.

**PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED,** Petitioners, SARAH BARBER, as Next Friend of J.B., a minor, pray that this Honorable Court:

1. Order a speedy hearing of a declaratory-judgment action under Rule 57.
2. Order to expedite the preliminary-injunction hearing under Rule 65.
3. Issue a permanent injunction on Respondents' actions to distribute consent forms for corporal punishment to parents or guardians of children with IEPs or 504 plans and rescind the consent forms that have already been distributed.
4. Provide any other relief that the Court deems just and fair.

Respectfully submitted, this 11<sup>th</sup> day of March, 2020.

**SARAH BARBER, as Next Friend of J.B., a  
Minor, PETITIONERS**

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