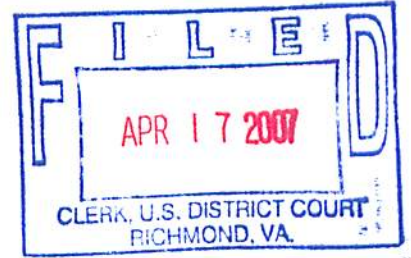


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



H.H., a minor, by and through)
her mother and next friend, H.F.;)
and H.F.;)

Plaintiffs,)

v.)

Civil Action No. 3:07CV223
RLW

CHESTERFIELD COUNTY)
SCHOOL BOARD;)
MARCUS J. NEWSOME,)
in his official capacity as Superintendent)
of Chesterfield County Public Schools;)
WANDA MOFFETT, individually)
and in her official capacity as an employee of)
the Chesterfield County School Board;)
and ANN MINGUZZI, individually)
and in her official capacity as an employee of)
the Chesterfield County School Board,)

Defendants.)

COMPLAINT

Plaintiff, H.H., a minor, by and through her mother and next friend, H.F., and Plaintiff H.F. in her own right, by counsel, file this Complaint on the following grounds:

Preliminary Statement

1. This case arises out of the gross neglect and abuse of a six-year old child with disabilities by the public school employees into whose care she was entrusted. It is a case involving long periods of physical restraint, deliberate neglect and verbal abuse – all suffered by a little girl who was helpless to defend herself or even to speak out against her wrongdoers. It is also a case involving retaliation by those employees because of the mother’s advocacy for the rights of the disabled. By their acts and omissions, the Defendants have violated the

constitutional, statutory and common law rights of both the child and her mother; and it is to vindicate those rights that these Plaintiffs now come before this Court and seek relief.

2. More specifically, the Plaintiffs allege a deprivation of the child's personal liberty in violation of the Fourteenth Amendment, and they bring suit for that violation under 42 U.S.C. § 1983. Under the facts of this case, such deprivation of personal liberty, abuse and neglect also constitute common law torts, including false imprisonment and intentional infliction of emotional harm. The Plaintiffs assert those common law claims as well. The Plaintiffs also allege that the child has suffered discrimination and other mistreatment based on her disability in violation of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). And, they invoke the ADA yet again because of the retaliation against the mother. As relief for the egregious violations of their rights, the Plaintiffs seek damages as well as injunctive relief and other relief provided by law.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction of the federal law claims under 28 U.S.C. §§ 1331 and 1343. This Court also has subject matter jurisdiction of the state law claims under 28 U.S.C. § 1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because H.H. and H.F. reside within this judicial district and because a substantial part of the events giving rise to the claims occurred in this district and in this division.

The Parties

5. H.H. is a severely disabled six-year old girl, who suffers from an array of neurological and other deficits. Her disabilities include a present inability to walk or speak.

6. Despite H.H.'s severe disabilities, she has the ability to crawl energetically, and she is very mobile. Because H.H. has not yet learned to walk, she is typically transported from place to place in a wheelchair and, for safety reasons, she is typically strapped in her wheelchair during such times. There is, however, no medical or other justification to keep her strapped in her wheelchair when she is inside her classroom or for long periods of time.

7. H.H. is a "qualified individual with a disability" within the meaning of the ADA with respect to the services, programs and activities of the Chesterfield County School Board ("CCSB"). *See* 42 U.S.C. § 12131.

8. H.H. is an "otherwise qualified individual with a disability" within the meaning of Section 504 with respect to the benefits, programs and activities of CCSB. *See* 29 U.S.C. 794.

9. H.F. is the mother of H.H. She brings this action as the next friend of H.H. and in her own right as well. H.F. and H.H. reside in Chesterfield County, Virginia.

10. Defendant Chesterfield County School Board ("CCSB") operates the public schools in Chesterfield County, Virginia, including O.B. Gates Elementary School ("O.B. Gates").

11. CCSB is a "public entity" within the meaning of the ADA. *See* 42 U.S.C. § 12131. CCSB as well as the CCSB services, programs and activities implicated here receive Federal assistance within the meaning of 29 U.S.C. §§ 794 and 794a.

12. Defendant Marcus J. Newsome is the Superintendent of the Chesterfield County Public Schools and, as such, has supervisory responsibility over the schools operated by CCSB, including but not limited to responsibility for ensuring that CCSB employees comply with federal and state laws. He is an appropriate party because of the nature of the relief sought by the Plaintiffs. He is sued in his official capacity only.

13. Defendant Wanda Moffett was the special education teacher assigned to H.H. when H.H. attended O.B. Gates. Together with Defendant Ann Minguzzi, Moffett exercised direct and immediate control over H.H. on a daily basis and was directly responsible for providing H.H. with the services, programs and/or activities of CCSB to which H.H. was entitled. Moffett is sued in her official and individual capacities.

14. Defendant Ann Minguzzi was the special education teaching assistant at O.B. Gates. Together with Defendant Wanda Moffett, Minguzzi exercised direct and immediate control over H.H. on a daily basis and was directly responsible for providing H.H. with the services, programs and/or activities of CCSB to which H.H. was entitled. Minguzzi is sued in her official and individual capacities.

Facts

15. During the 2003-04 and 2004-05 school years, H.H. attended a pre-school program for children with disabilities at Marguerite Christian Elementary School ("Marguerite Christian"), a public school operated by CCSB. These were happy and successful school years for H.H. She enjoyed going to school and, at the end of the 2004-05 school year, H.H. graduated from the Marguerite Christian pre-school program.

16. For the 2005-06 school year, CCSB placed H.H. in a different school, O.B. Gates, where she was assigned to the classroom of Moffett and Minguzzi. This was a small class for students with severe disabilities. At the beginning of the 2005-06 school year, it included a total of approximately 6 students.

17. H.H. attended the Moffett/Minguzzi classroom at O.B. Gates from September 19, 2005 until April 20, 2006.

18. As the 2005-06 school year progressed, H.F. became increasingly concerned – then worried, then fearful – about what was happening to her daughter at O.B. Gates. Although H.H.’s disabilities prevent her from speaking, H.F. had reason to believe that something was seriously wrong. Typically, H.F. drove H.H. to school in the mornings and, as they approached the school, H.H. increasingly displayed a pattern of extreme agitation and anxiety, often screaming, when the school came into view. Similarly, H.H. displayed agitation, anxiety and was often screaming when H.F. picked her up from school in the afternoons, yet this behavior subsided as she returned home. H.H.’s pattern of conduct in connection with O.B. Gates was markedly different from the happy and peaceful behavior she displayed when she attended Marguerite Christian and when she was away from O.B. Gates on evenings, weekends and vacation periods.

19. Compounding H.F.’s concern was the sharp increase in seizures experienced by H.H. Although H.H. had a previous history of seizure activity, her seizures were infrequent and typically mild when she began at O.B. Gates in September of 2005. Yet, as the 2005-06 school year at O.B. Gates progressed, the seizures increased remarkably in their intensity and frequency. (After leaving O.B. Gates, H.H.’s seizures have subsided drastically.)

20. Although H.F. sought to obtain information about H.H. from Moffett, Minguzzi and/or other CCSB employees, she was never given a satisfactory explanation for H.H.’s deterioration.

21. Believing something to be terribly wrong at O.B. Gates – and fearing for the welfare of her daughter – H.F. set out to obtain evidence about what was happening to H.H. during the course of the school day. This she did by placing a small electronic recording device in H.H.’s wheelchair on April 18, 19 and 20, 2006.

22. H.F.'s use of an electronic recording device was reasonably calculated to record only the conversations and events taking place in the presence of her minor daughter.

23. H.F. had a good faith and objectively reasonable basis for believing that it was necessary and in the best interest of H.H. to consent on behalf of H.H. to such recording.

24. Such recording is lawful under the vicarious consent doctrine. *See, e.g., Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1999); *State of Arizona v. Morrison*, 56 P.3d 63 (Ariz. Ct. App. 2002); *Commonwealth v. Barbara*, 763 N.E.2d 547 (Mass. App. Ct. 2002).

25. On two of the three days when the recordings were made, H.H. was the only child in the Moffett/Minguzzi classroom. On one day, there was only one other child in the Moffett/Minguzzi classroom. Even so, the electronic recordings show the following:

- (a) Moffett, Minguzzi and/or other CCSB employees kept H.H. unnecessarily strapped and restrained in her wheelchair for hours at a time, thus unlawfully depriving H.H. of her personal liberty.
- (b) Moffett, Minguzzi and/or other CCSB employees provided H.H. with little or no services, activities or programs.
- (c) Moffett, Minguzzi and/or other CCSB employees used the school day to carry on lengthy personal conversations among themselves about various topics (*e.g.*, shopping, shoes, family members, the religious beliefs of various students, vacations, weddings and other topics).
- (d) Moffett, Minguzzi and/or other CCSB employees also used the school day to make derogatory comments about H.H. and H.F. Such comments include:
 - i. telling H.H. that she is "gross,"
 - ii. telling H.H., "I'm ignoring you. I don't have to listen to you"

iii. engaging in the following exchange:

- “Mom says that she does not scream at home.”
- “Oh! They rock her and coddle her and give her what she wants and, I mean look at her ... and mom just feeds her chocolate and Twinkies and keep her happy.”

iv. engaging in the following exchange:

- “Did ya’ lock that ol’ wheelchair right next to a tree?”
- “That’s what I’m thinkin’.”

v. otherwise complaining about H.H. and H.F.

(e) Moffett, Minguzzi and/or other CCSB employees also used the school day to make derogatory comments about other students, including the following:

- “That kid has boobs bigger than mine! Look at that! Poor, little thing! ... He needs liposuction or something or a bra.”

(f) Moffett, Minguzzi and/or other CCSB employees also used the school day to discuss plans for unlawfully predetermining the results of an upcoming IEP meeting for H.H. and otherwise unlawfully interfering with H.H.’s and H.F.’s rights under the IDEA.

(g) Moffett, Minguzzi and/or other CCSB employees also expressed their hostility and retaliatory intent toward H.H. and H.F., saying, for example: “You know, you would think that her mom would be clear about the situation, knowing that her child is in our hands 6 1/2 hours out of the day.”

26. During the 2005-06 school year – including but not limited to the days when the recordings were made – CCSB had a duty to provide H.H. with certain services, programs and/or activities (collectively, “the Services”).

27. The Services included, but were not limited to, speech therapy, occupational therapy, physical therapy and other interactions with her special education teacher, teaching assistant and peers (including both disabled and non-disabled peers).

28. In order to provide the Services to H.H. and in order not to deprive H.H. of her personal liberty, it was the duty of Moffett, Minguzzi and/or other CCSB employees to:

- (a) release H.H. from her wheelchair, and/or
- (b) permit her to interact with her peers – both disabled and non-disabled – at various times throughout the school day, especially at lunchtime, recess and resource classes (*e.g.*, art, physical education, music, library and computer lab).

29. On numerous occasions during the 2005-06 school year – including but not limited to the days the recordings were made – CCSB breached its duties to H.H. in that Moffett, Minguzzi and/or other CCSB employees failed to release H.H. from her wheelchair, failed to permit her to interact with her peers and/or provided her with little or no Services.

30. Instead, Moffett, Minguzzi and/or other CCSB employees deprived H.H. of her personal liberty by causing her to be restrained unnecessarily in her wheelchair for long periods of time and/or by keeping her unnecessarily isolated and secluded so as to have little or no interaction with her peers.

31. During such periods of restraint and/or seclusion, Moffett, Minguzzi and/or other CCSB employees grossly neglected and/or abused H.H.

32. The acts and failures by Moffett, Minguzzi and/or other CCSB employees were undertaken with malice, with callous and deliberate indifference toward the rights of H.H. and H.F., and/or in reckless disregard for their rights.

33. The acts and failures by Moffett, Minguzzi and/or other CCSB employees were undertaken willfully and wantonly and/or with bad faith or gross misjudgment.

34. The acts and failures by Moffett, Minguzzi and/or other CCSB employees were under color of state law.

35. The acts and failures by Moffett, Minguzzi and/or other CCSB employees were in the course and scope of their employment by CCSB.

36. CCSB management personnel, including but not necessarily limited to the O.B. Gates principal and/or assistant principal were aware – or reasonably should have been aware – of the acts and failures by Moffett, Minguzzi and/or other CCSB employees. Yet CCSB took no corrective action, and thereby ratified those acts and failures.

37. As the direct and proximate result of the foregoing acts and failures by Moffett, Minguzzi and/or other CCSB employees, H.H. has been caused to suffer great injuries and losses, including but not limited to loss of the Services, loss of personal liberty, severe and serious emotional distress, numerous seizures and other physical, mental, emotional and developmental injuries and losses.

38. Such injuries and losses to H.H. necessitated and/or continue to necessitate:

- (a) additional treatment of H.H. by a neurologist and other health care professionals,
- (b) compensatory therapy and/or educational services, and
- (c) expenditure of funds by and/or on behalf of H.F. in order to obtain such treatment, therapy and services.

39. H.F. is and has been an advocate for the rights of her daughter and other children with disabilities under the IDEA, such advocacy having taken place at IEP meetings for H.H. and

through H.F.'s participation in the Chesterfield Special Education Advisory Committee and in other venues.

40. Upon information and belief, Moffett, Minguzzi and/or other CCSB employees were aware of some or all of such advocacy by H.F. and resented it. This is shown, *inter alia*, by one or more statements made by Moffett, including a statement made by her to H.F. early in the 2005-06 school year to the effect that, "I have dealt with parents like you before."

41. Upon information and belief, H.H.'s special education teacher and/or other CCSB employees retaliated against H.H. and H.F. by:

- (a) subjecting H.H. to the mistreatment described in this Complaint; and/or
- (b) unlawfully working to predetermine the results of an upcoming IEP meeting for H.H. and otherwise unlawfully interfering with H.H.'s and H.F.'s rights.

Count I
Section 504 of the Rehabilitation Act

42. Plaintiffs repeat and incorporate by reference paragraphs 1-41 of the Complaint as if set forth fully herein.

43. Section 504 of the Rehabilitation Act provides that, "No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." *See* 29 U.S.C. § 794.

44. By the acts and failures of Moffett, Minguzzi and/or other CCSB employees, CCSB excluded H.H. from participation in and/or denied her the benefits of the services, programs and/or activities of CCSB, including but not limited to the Services described in

paragraphs 26 and 27. Such exclusion and/or denial were solely by reason of H.H.'s disability and were in violation of Section 504.

45. By the acts and failures of Moffett, Minguzzi and/or other CCSB employees, CCSB otherwise subjected H.H. to discrimination under programs and activities of CCSB, including but not limited to the Services described in paragraphs 26 and 27. Such discrimination was solely by reason of H.H.'s disability and was in violation of Section 504.

46. As the direct and proximate result of violating Section 504, CCSB caused H.H. to suffer the injuries and losses described in paragraphs 37 and 38, and caused H.H. to suffer a loss of rights guaranteed by Section 504.

47. As the entity held accountable for violations of Section 504, CCSB is liable for all of said injuries and losses.

Count II
Violation of the ADA – Discrimination, Etc.

48. Plaintiffs repeat and incorporate by reference paragraphs 1-47 of the Complaint as if set forth fully herein.

49. The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *See* 42 U.S.C. § 12132.

50. By the acts and failures of Moffett, Minguzzi and/or other CCSB employees, CCSB excluded H.H. from participation in, and denied H.H. the benefits of, the services, programs, and/or activities of CCSB, including but not limited to the Services described in paragraphs 26 and 27. Such exclusion and denial were by reason of H.H.'s disability.

51. By the acts and failures of Moffett, Minguzzi and/or other CCSB employees, CCSB discriminated against H.H. by reason of her disability.

52. As the direct and proximate result of violating the ADA, CCSB caused H.H. to suffer the injuries and losses described in paragraphs 37 and 38, and caused H.H. to suffer a loss of rights guaranteed by the ADA.

53. As the entity held accountable for violations of the ADA, CCSB is liable for all of said injuries and losses.

Count III
Violation of the ADA – Retaliation, Etc.

54. Plaintiffs repeat and incorporate by reference paragraphs 1-53 of the Complaint as if set forth fully herein.

55. The ADA imposes a duty on the Defendants not to engage in retaliation or coercion against H.H. or H.F. Specifically, 42 U.S.C. § 12203 provides:

(a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

56. By the acts and omissions of Moffett, Minguzzi and/or other CCSB employees, CCSB violated the foregoing provisions of the ADA by retaliating against H.H. and H.F. and/or by engaging in prohibited interference, coercion and/or intimidation.

57. As the direct and proximate result of violating the ADA, CCSB caused H.H. to suffer the injuries and losses described in paragraphs 37 and 38, and caused H.H. and/or H.F. to suffer a loss of rights guaranteed by the ADA.

58. As the entity held accountable for violations of the ADA, CCSB is liable for all of said injuries and losses.

Count IV
Deprivation of Liberty, 42 U.S.C. § 1983

59. Plaintiffs repeat and incorporate by reference paragraphs 1-58 of the Complaint as if set forth fully herein.

60. By causing H.H. to be strapped down and restrained unnecessarily in her wheelchair for long periods of time despite their duty to release her, Moffett, Minguzzi and/or other CCSB employees deprived H.H. of her personal liberty without due process of law in violation of the Fourteenth Amendment.

61. As the direct and proximate result of such deprivation of liberty, H.H. suffered the injuries and losses described in paragraphs 37 and 38.

62. Moffett and/or Minguzzi are directly and individually liable for all of said injuries and losses; and CCSB is liable for all of said injuries and losses by virtue of its ratification of those acts and failures.

Count IV
Intentional Infliction of Emotional Distress

63. Plaintiffs repeat and incorporate by reference paragraphs 1-62 of the Complaint as if set forth fully herein.

64. The acts and failures of Moffett, Minguzzi and/or other CCSB employees offend generally accepted standards of decency or morality.

65. As the direct and proximate result of such the acts and failures of Moffett, Minguzzi and/or other CCSB employees, H.H. suffered severe and serious emotional distress as well as the other injuries and losses described in paragraphs 37 and 38.

66. Moffett and/or Minguzzi are directly and individually liable for all of said injuries and losses; and CCSB is liable for all of said injuries and losses under the doctrine of *respondeat superior*.

Count VI
False Imprisonment

67. Plaintiffs repeat and incorporate by reference paragraphs 1-66 of the Complaint as if set forth fully herein.

68. By causing H.H. to be strapped down and restrained in her wheelchair for long periods of time despite their duty to release her, Moffett, Minguzzi and/or other CCSB employees acted and/or failed to act without justification or excuse, and thereby falsely imprisoned H.H.

69. As the direct and proximate result of such the acts and failures of Moffett, Minguzzi and/or other CCSB employees, H.H. suffered the injuries and losses described in paragraphs 37 and 38.

70. Moffett and/or Minguzzi are directly and individually liable for all of said injuries and losses; and CCSB is liable for all of said injuries and losses under the doctrine of *respondeat superior*.

Prayer for Relief

WHEREFORE, Plaintiff H.H., by and through her mother and next friend, H.F., and H.F., respectfully request that this Court grant the following relief:

- a. Declare that CCSB has violated H.H.'s rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the anti-discrimination provisions of the ADA (42 U.S.C. § 12132), and the anti-retaliation provisions of the ADA (42 U.S.C. § 12203);
- b. Declare that CCSB has violated H.F.'s rights under the anti-retaliation provisions of the ADA (42 U.S.C. § 12203);
- c. Declare that Moffett, Minguzzi and CCSB have deprived H.H. of her liberty without due process of law;
- d. Declare that Moffett, Minguzzi and CCSB have wrongfully and deliberately inflicted serious emotional harm on H.H.;
- e. Declare that Moffett, Minguzzi and CCSB have falsely imprisoned H.H.;
- f. Issue a permanent injunction against all Defendants enjoining further violations of the rights of H.H. and H.F.;
- g. Grant H.H. an award of compensatory damages against CCSB, Moffett and Minguzzi, jointly and severally, in a sum sufficient to compensate her for her injuries and losses, plus pre-judgment and post-judgment interest on such award;
- h. Grant H.H. an award of punitive damages against CCSB, Moffett and Minguzzi, jointly and severally, plus pre-judgment and post-judgment interest on such award ;
- i. Grant H.F. an award of compensatory damages against CCSB, Moffett and Minguzzi, jointly and severally, in a sum sufficient to compensate her for her injuries and losses, plus pre-judgment and post-judgment interest on such award;
- j. Grant H.F. an award of punitive damages against CCSB, Moffett and Minguzzi, jointly and severally, plus pre-judgment and post-judgment interest on such award;

- k. Grant H.H. and H.F. an award of expert fees and attorneys' fees against CCSB, Moffett and Minguzzi, jointly and severally, as provided by 29 U.S.C. § 794a(b), 42 U.S.C. § 12203(c), 42 U.S.C. § 1988(b) and (c) and other applicable law; and
- l. Grant H.H. and H.F. such further relief as this Court deems equitable and proper.

PLAINTIFFS RESPECTFULLY DEMAND TRIAL BY JURY.

Respectfully submitted,

H.H., a minor, by and through her
mother and next friend, H.F.;
and H.F.

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