

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EHLENA FRY, a minor, by Case No. _____
her next friends, STACY FRY
and BRENT FRY,

Plaintiff,

v.

**COMPLAINT AND
JURY DEMAND**

NAPOLEON COMMUNITY
SCHOOLS, JACKSON
COUNTY INTERMEDIATE
SCHOOL DISTRICT, and
PAMELA BARNES, in
her individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

(Filed Dec. 17, 2012)

INTRODUCTION

1. This disability rights case is filed by a young girl with cerebral palsy against her former school district and intermediate school district for refusing to allow her to bring a trained service dog with her to school to assist her with mobility and balance problems and increase her independence.

2. Plaintiff Ehlena Fry is an eight-year-old girl who was born with spastic quadriplegic cerebral palsy, the most severe form of cerebral palsy. Spastic quadriplegic cerebral palsy affects Ehlena's legs,

arms, and body and significantly limits her motor skills and mobility. She is not impaired cognitively, but needs physical assistance in her daily activities.

3. In 2009, when Ehlena was five years old, Ehlena's parents, with the generous help of families at Ehlena's elementary school and throughout the community, obtained a service dog prescribed by their pediatrician to help her to live as independently as possible. Together the family and the dog, a Goldendoodle named "Wonder," trained at a facility in Ohio for service animals and their handlers. Wonder was certified and trained to help Ehlena with mobility and to assist her in daily activities, including retrieving dropped items, opening and closing doors, turning on and off lights, taking her coat off, using the bathroom, and helping bridge social barriers.

4. It was the pediatrician's and the family's intention for Wonder to accompany Ehlena at all times to facilitate her independence and to ensure that Ehlena and Wonder would bond after the training. However, despite knowing of the Frys' plans, Defendants refused to allow Ehlena to attend school with Wonder.

5. As a result, Ehlena was forced to attend school without Wonder from October 2009 to April 2010. After Ehlena's lawyers met with the school district's counsel, Ehlena was allowed to bring Wonder to school for a "trial period" at the end of the school year. However, the administration refused to allow Ehlena to use Wonder as a service dog during

that period; rather, the dog was required to remain in the back of the room during classes, was forbidden from assisting Ehlena with many tasks he had been specifically trained to do, and was forbidden from accompanying and assisting Ehlena during recess, lunch, computer lab, library time and other activities.

6. Following the trial period, the administration refused to modify the school's policies to accommodate Ehlena's disabilities as required by law and even refused to recognize Wonder as a service dog. Consequently, Ehlena's parents removed her from school and filed a complaint with the Office of Civil Rights (OCR) at the United States Department of Education. While waiting for an OCR ruling, Ehlena was home-schooled using an online curriculum and she had very limited contact with children her own age.

7. Two years later, in May 2012, OCR issued a disposition letter finding that Ehlena's school district, Defendant Napoleon Community Schools, and Defendant Jackson Intermediate School District had violated Ehlena's rights under Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and the regulations implementing these civil right [sic] laws.

8. In order to settle the complaint with OCR, the school district agreed to take Ehlena back with Wonder, but the district refused to accept the factual findings or legal conclusions of OCR. After Ehlena's father, Brent Fry, spoke with Pamela Barnes, the principal, to discuss Ehlena returning to school with

Wonder, the parents had serious concerns that the administration would resent Ehlena and make her return to school difficult. Accordingly, they found a public school in Washtenaw County where the staff welcomed Ehlena and Wonder and saw their presence as an opportunity to promote inclusion of students with disabilities within the school. Ehlena now attends the school in Washtenaw County.

9. Ehlena, through her parents, brings this action against the Napoleon Community Schools and Jackson Intermediate School District, and Pamela Barnes, pursuant to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Michigan Persons with Disabilities Civil Rights Act. She seeks a declaration that her rights were violated and damages for the injuries she suffered as a result of the denial of her civil rights.

JURIDICTION [sic] AND VENUE

10. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking redress for the deprivation of rights secured by federal law – specifically Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. § 794(a), and 42 U.S.C. § 1983. Jurisdiction over the supplemental state-law claim is proper under 28 U.S.C. § 1337.

11. Venue is proper in that the complained of actions took place in, and the parties reside in, Jackson County, which is in the Eastern District of Michigan.

PARTIES

12. Plaintiff Ehlena Fry is a minor who resides in Jackson County, within the Eastern District of Michigan. She brings this action through her parents and next friends, Stacy and Brent Fry, who also reside in Jackson County.

13. Defendant Napoleon Community Schools (the “District”) is a public school district and a body corporate organized under the laws of Michigan, located in Jackson County.

14. Defendant Jackson County Intermediate School District (“ISD”) is a public intermediate school district organized under the laws of Michigan, located in Jackson County.

15. Pamela Barnes is the principal of Ezra Eby Elementary School.

16. During the 2009-2010 school year, Plaintiff attended Ezra Eby Elementary School, which is part of the Defendant Napoleon Community Schools and Defendant Jackson Intermediate School District.

FACTUAL ALLEGATIONS

17. Plaintiff incorporates the preceding paragraphs.

18. Ehlena was born in 2004 and is now eight years old.

19. Ehlena was born with spastic quadriplegic cerebral palsy, which is the most severe form of cerebral palsy. Spastic quadriplegic cerebral palsy affects Ehlena's legs, arms, and body and significantly limits her motor skills and mobility.

20. Ehlena is not cognitively impaired, but she also has been diagnosed with ADHD inattentive type and seizure disorder.

21. Ehlena is a person with a disability as that term is defined by Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Michigan Persons with Disabilities Civil Rights Act.

22. On or about May 2008, Ehlena's pediatrician wrote a prescription for a service dog to assist her in her everyday activities.

23. Before enrolling her in the Ezra Eby Elementary School kindergarten program for the 2009-2010 school year, Ehlena's parents informed the school administration that they planned to obtain a service dog for Ehlena to assist her in her everyday activities. Defendants led Ehlena's parents to believe that the service dog could attend school with Ehlena.

24. During the 2008-2009 school year, the surrounding communities sponsored a successful fundraisers [sic] to raise a portion of the approximately

\$13,000 to help Ehlena's family pay for the training of a service dog, "Wonder."

25. Wonder is a Goldendoodle, a cross between a Golden Retriever and a Poodle. Goldendoodles are known for being intelligent, affectionate, human-oriented dogs. Because Goldendoodles have a no-shedding or low-shedding coat, they are generally tolerable to people with allergies to dogs.

26. In the fall of 2009, Ehlena and her family trained with Wonder at the service animal training facility "4 Paws for Ability" in Ohio, a non-profit agency specializing in placing service dogs.

27. Wonder is a specially trained and certified service dog and assists Ehlena in a number of ways, including, but not limited to, retrieving dropped items, helping her balance when she uses her walker, opening and closing doors, turning on and off lights, helping her take off her coat, helping her transfer to and from the toilet.

28. Wonder enables Ehlena to develop independence and confidence and helps her to bridge social barriers.

29. While Ehlena must have a handler assist her with Wonder while she is young, she will be able to handle Wonder on her own when she is older and stronger.

30. In October 2009, Wonder received his certification and returned to Michigan with Ehlena and her family.

31. However, much to the Frys' surprise and disappointment, Defendants told them that Ehlena could not bring Wonder to school.

32. Jackson County Intermediate School District Director Richard Rendell and Pamela Barnes formalized the decision to reject the request to bring Wonder to school in a specially convened Individualized Education Plan ("IEP") meeting on January 7, 2010.

33. The IEP states that Ehlena's parents "requested a service dog for their daughter to enhance her independence" and that the request was denied as Ehlena's "physical and academic needs are being met through the services/programs/accommodations of the IEP."

34. The Frys, through pro bono counsel, negotiated an agreement with Defendants under which Ehlena was allowed to bring Wonder to school for a 30-day "trial period" that began on April 12, 2010 and was extended through the end of the school year.

35. However, Defendants refused to allow Ehlena to use Wonder as a service dog during the trial period; rather, the dog was required to remain in the back of the room during classes, and was forbidden from assisting Ehlena with many tasks he had been specifically trained to do.

36. Defendants also refused to allow Wonder to accompany and assist Ehlena during recess, lunch, computer lab and library.

37. Defendants further prohibited Ehlena from participating in other activities with Wonder such as walking the track during “Relay for Life,” a school play and “field day.”

38. Following the trial period, Defendants refused to modify the school’s policies to accommodate Ehlena’s disabilities for the next school year as required by law.

39. Defendants refused to extend the areas where Wonder would be allowed to assist Ehlena and refused to allow Wonder to perform all the tasks for which he had been trained.

40. Defendants even refused to recognize Wonder as a service dog.

41. As a result, Ehlena’s parents removed Ehlena from Ezra Eby Elementary School and filed a complaint with the Office of Civil Rights (OCR) at the United States Department of Education.

42. While waiting for an OCR ruling, Ehlena was homeschooled using an online curriculum for two years.

43. In addition to her duties raising Ehlena and her siblings, Stacy Fry took on the added educational responsibilities to ensure that Ehlena was receiving the appropriate curriculum.

44. Stacy Fry’s role as Ehlena’s teach [sic] was particularly challenging and frustrating because she

did not have specific training in teaching methods that Ehlena required.

45. Ehlena had very limited contact with children her own age while she was being homeschooled.

46. Two years later, in May 2012, OCR issued a 14-page disposition letter to the school finding that Ehlena's school district and intermediate school district had violated Ehlena's rights under Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and the federal regulations implementing the laws. (See 5/3/12 Disposition Letter and Resolution Agreement, attached as Exhibit A)

47. In order to settle the complaint with OCR, the school district entered into a six-page resolution agreement in which it agreed to take Ehlena back with Wonder and allow Wonder to accompany and assist Ehlena throughout the school. However, the district refused to accept the factual findings or legal conclusions of OCR. (*See Exhibit A*)

48. After Brent Fry spoke with the [sic] Pamela Barnes in the summer of 2012 to discuss Ehlena returning to school with Wonder in the fall, Ehlena's parents had serious concerns that the administration would resent Ehlena and make her return to school difficult.

49. Accordingly, they found a public school in Washtenaw County, where the principal and staff enthusiastically welcomed Ehlena and Wonder and saw their presence as an opportunity to promote

inclusion of students with disabilities within the school.

50. Ehlena now attends a Washtenaw County school and is again able to interact with children her own age.

51. Defendants' refusal to accommodate Ehlena's disabilities has caused her harm, including, but not limited to:

a. denial of equal access to Defendants' facilities, programs, and services;

b. denial of the use of Wonder as a service dog at school from October 2009 to June 2010;

c. interference with Ehlena's ability to form a bond with Wonder from October 2009 to June 2010, which compromised Wonder's ability to effectively assist Ehlena outside of school;

d. denial of the opportunity to interact with other students at Ezra Eby Elementary School during the 2010-2011 and 2011-2012 school years when she was homeschooled due to the refusal of Defendants to use Wonder as a service dog at school;

e. loss of ability to interact with students at Ezra Eby Elementary School and stress caused by leaving the Napoleon Community Schools and enrolling in a new school in a different county for the 2012-2013 academic year; and

f. emotional distress and pain, embarrassment, mental anguish, inconvenience, and loss of enjoyment

of life resulting from Defendants' refusal to reasonably accommodate her as a person with a disability who uses a service animal.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF AGAINST THE NAPOLEON COMMUNITY SCHOOLS AND JACKSON COUNTY INTERMEDIATE SCHOOL DISTRICT SECTION 504 OF THE REHABILITATION ACT OF 1973

52. Plaintiff incorporates the preceding paragraphs.

53. Section 504 of the Rehabilitation Act of 1973 ("Section 504") and its implementing regulations provide, "no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4(a).

54. Among other requirements, entities subject to Section 504 must provide equal opportunity to qualified persons with disabilities to participate or benefit from any aid, benefit, or service they make available. 34 C.F.R. § 104.4(b)(1)(ii).

55. Entities subject to Section 504 must avoid otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege,

advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. 34 C.F.R. § 104.4(b)(1)(vii).

56. An “individual with a disability” is defined by reference to the Americans with Disabilities Act (“ADA”). 29 U.S.C. § 705(20)(B); referencing 42 U.S.C. § 12102(1). A person has a disability under Section 504 if they have a physical or mental impairment that substantially limits one or more of their major life activities. 42 U.S.C. § 12102(1).

57. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, standing, lifting, bending, speaking, learning, and working. 42 U.S.C. § 12102(2)(A). Major life activities also include the operations of major bodily function. 42 U.S.C. § 12102(2)(B).

58. A “qualified individual with a disability” is one who, with or without reasonable accommodations for their disability, meets essential eligibility requirements to receive services from or participate in the programs or activities of a recipient of Federal financial assistance. *See* 29 U.S.C. § 794(a).

59. A “program or activity” includes local education agencies, public boards of education, and school systems. 29 U.S.C. § 794(b)(2)(B), referencing 20 U.S.C. § 7801(26). A “recipient of federal financial assistance” is a public or private agency or other entity to which Federal financial assistance is extended directly or through another recipient. 34 C.F.R. § 104.3(f).

60. Ehlena is an individual having physical impairments, including but not limited to, spastic quadriplegic cerebral palsy, and although Ehlena is not cognitively impaired, she also has been diagnosed with ADHD inattentive type and seizure disorder.

61. Ehlena's impairments affect her major life activities of caring for herself, and performing manual tasks. *See 42 U.S.C. § 12102(2).*

62. Ehlena is an individual with disabilities as defined by Section 504. 29 U.S.C. § 705(20)(B); referencing 42 U.S.C. § 12102(1).

63. Ehlena is an otherwise qualified individual with disabilities who meets essential eligibility requirements to receive services from or participate in the programs or activities of the District and ISD. *See 42 U.S.C. § 12131(2); 29 U.S.C. § 794(a).*

64. Ehlena attended and received educational services from the District and ISD.

65. The District and ISD are a “program[s] or activiti[es]” subject to Section 504. *See 29 U.S.C. § 794(b)(2)(B), referencing 20 U.S.C. § 7801(26).*

66. The District and ISD are recipients of federal financial assistance as they receive federal funds.

67. The District and ISD are entities subject to the non-discrimination requirements of Section 504. *See 29 U.S.C. § 794(a); see also 34 C.F.R. § 104.4.*

68. The District's and ISD's refusal to allow Wonder to act as a service dog for Ehlena and to permit his access in the instructional setting discriminated against Ehlena as a person with disabilities who uses a service animal by denying her equal access and otherwise limiting her access to the District's and ISD's facilities, programs, and services as compared to her non-disabled, non-service animal user peers. *See* 34 C.F.R. §§ 104.4(a), 104.4(b)(ii) and (iv).

69. The District's and ISD's refusal to recognize Wonder as a service dog and to permit his access in the instructional setting was illegal disability-based discrimination that violated Section 504 of the Rehabilitation Act of 1973.

70. The District's and ISD's discrimination was intentional as the District's and ISD's knowingly refused to recognize Wonder as a service dog despite having full knowledge that Ehlena qualified as an individual with disabilities and relied upon Wonder to obtain equal access to the District's and ISD's facilities, programs, and services as compared to her non-disabled, non-service animal user peers.

71. As a proximate cause of these violations of Section 504, Ehlena has suffered harm as set forth above.

**SECOND CLAIM FOR RELIEF AGAINST
THE NAPOLEON COMMUNITY SCHOOLS
AND JACKSON COUNTY INTERMEDIATE
SCHOOL DISTRICT TITLE II OF THE
AMERICANS WITH DISABILITIES ACT**

72. Plaintiff incorporates all prior allegations.

73. Title II of the ADA and its implementing regulations forbid public entities, including local educational agencies, to exclude or deny people with disabilities the benefits of its services, programs, or activities, or to discriminate based on disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.104 & .130(a).

74. Prohibited disability-based discrimination by public entities includes the failure to provide qualified individuals with disabilities an equal opportunity to participate in or benefit from aids, benefits, or services or “otherwise limit” a qualified individual with a disability in the enjoyment of any right, privilege, aid, benefit, or service. 28 C.F.R. § 35.130(b)(1)(ii) & (vii). Prohibited discrimination additionally includes the failure to make reasonable modifications as necessary to avoid discrimination against an individual based on their disability. 28 C.F.R. § 35.130(b)(7).

75. An “individual with a disability” is one who has a physical or mental impairment that substantially limits one or more of their major life activities. 42 U.S.C. § 12102(1).

76. Major life activities include, but are not limited to, caring for oneself, performing manual

tasks, walking, standing, lifting, bending, speaking, learning, and working. 42 U.S.C. § 12102(2)(A). Major life activities also include the operations of major bodily function. 42 U.S.C. § 12102(2)(B).

77. A “qualified individual with a disability” is one who, with or without reasonable accommodations for her disability, meets essential eligibility requirements to receive services from or participate in the programs or activities of the public entity. 42 U.S.C. § 12131(2).

78. Ehlena is an individual having physical impairments, including but not limited to, spastic quadriplegic cerebral palsy, and although Ehlena is not cognitively impaired, she has been diagnosed with ADHD inattentive type and seizure disorder.

79. Ehlena’s impairments affect her major life activities including caring for herself, walking, balancing, and performing manual tasks. See 42 U.S.C. § 12102(2)(A).

80. Ehlena is an otherwise qualified individual with disabilities who meets the essential eligibility requirements to receive services from or participate in the programs or activities of the District and ISD. *See* 42 U.S.C. § 12131(2).

81. The District and ISD are public entities forbidden to discriminate based on disability. *See* 42 U.S.C. § 12132.

82. The District’s and ISD’s deliberate refusal to recognize Wonder as a service dog and to permit his

access in the instructional setting, discriminated against Ehlena as a person with disabilities who uses a service animal by denying her equal access and otherwise limiting her access to the District's and ISD's facilities, programs, and services as compared to her non-disabled, non-service animal user peers. *See* 28 C.F.R. §§ 35.130(a), .130(b)(1)(ii) & (vii).

83. The District and ISD illegally discriminated against Ehlena in their continuing refusal to reasonably accommodate Ehlena as a person with disabilities who uses a service animal. *See* 28 C.F.R. § 35.130(b)(7).

84. The ADA defines a service animal as:

... any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

See 28 C.F.R. § 36.104.

85. The ADA further requires public entities to modify their “policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” *See* 28 C.F.R. § 36.302(c).

86. Wonder is a dog that was individually trained to perform tasks for Ehlena’s benefit. The tasks that

Wonder has been trained to perform are uniquely suited to Ehlena's needs as a person with a disability.

87. The District's and ISD's refusal to grant Ehlena's requested accommodations was illegal disability-based discrimination that violates Title II of the Americans with Disabilities Act of 1990.

88. The District's and ISD's discrimination was intentional as the District and ISD knowingly refused to accommodate Ehlena despite having full knowledge that she is a qualified individual with disabilities and that she relied upon Wonder as a service dog under the ADA to obtain equal access to the District's and ISD's facilities, programs, and services as compared to her non-disabled, non-service animal user peers.

89. As a proximate cause of these violations of Title II of the Americans with Disabilities Act, Ehlena has suffered harm as set forth above.

**THIRD CLAIM FOR RELIEF AGAINST
THE NAPOLEON COMMUNITY SCHOOLS,
JACKSON COUNTY INTERMEDIATE
SCHOOL DISTRICT, AND PAMELA
BARNES MICHIGAN PERSONS WITH
DISABILITIES CIVIL RIGHTS ACT**

90. Plaintiff incorporates all prior allegations.

91. The Michigan Persons with Disabilities Civil Rights Act (the "Michigan Act") prohibits educational institutions to exclude or deny people with

disabilities the full benefits of their programs, activities, and facilities or to discriminate based on disability. M.C.L. § 37.1101 *et seq.*

92. The District and ISD are educational institutions as the term is defined in M.C.L. § 37.1401.

93. Barnes is an agent of an educational system as the term is defined in M.C.L. § 37.1401.

94. Ehlena is a person with a disability as that term is defined in the Michigan Act because she has physical impairments, including but not limited to, spastic quadriplegic cerebral palsy, and although Ehlena is not cognitively impaired, she also has been diagnosed with ADHD inattentive type and seizure disorder.

95. Ehlena's disabilities substantially limit one or more of her life activities and is unrelated to her ability to use and benefit from Defendants' educational activities, programs, and facilities.

96. Despite her disabilities, Ehlena is otherwise qualified to use and benefit from the District's and ISD's educational activities, programs, and facilities.

97. Defendants' refusal to recognize Wonder as a service dog and to permit his access in the instructional setting, discriminated against Ehlena as a person with disabilities who uses a service animal by denying her equal access and otherwise limiting her access to Defendants' facilities, programs, and services as compared to her non-disabled, non-service animal user peers. M.C.L. § 37.1402.

98. As a proximate cause of these violations of the Michigan Persons with Disabilities Act, Ehlena has suffered harm as set forth above.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- a. Enter judgment in her favor against Defendants;
- b. Issue a declaration stating that Defendants violated Plaintiff's rights under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act;
- c. Award her damages in an amount to be determined at trial;
- d. Award attorneys' fees pursuant to the Rehabilitation Act, the Americans with Disabilities Act, 42 U.S.C. § 1988 and the Michigan Persons with Disabilities Civil Rights Act; and
- e. Grant any other relief this Court deems appropriate.

JURY DEMAND

Plaintiff respectfully requests a jury trial on all issues triable to a jury.

Respectfully submitted,

/s/ Peter M. Kellett /s/ Michael J. Steinberg
Peter M. Kellett (P34345) Michael J. Steinberg
James F. Hermon (P43085)
(P53765) Kary L. Moss (49759)
Brandon M. Blazo American Civil
(P71172) Liberties Union
Dykema Gossett PLLC Fund of Michigan
Cooperating Attorneys, 2966 Woodward Avenue
American Fund Detroit, MI 48201
of Michigan Telephone: (313) 578-6814
400 Renaissance Center msteinberg@aclumich.org
Detroit, MI 48243 kmoss@aclumich.org
Telephone: (313) 568-6800
Pkellett@dykema.com
jhermon@dykema.com
bblazo@dykema.com
/s/Denise M. Heberle
Denise M. Heberle
(P64145)
Heberle & Finnegan
Cooperating Attorneys,
ACLU Fund of Michigan
2580 Craig Road
Ann Arbor, MI 48103
Telephone: (734) 302-3233
dmheberle@gmail.com

Attorneys for Plaintiffs

Dated: December 17, 2012

[Exhibit Omitted]
