**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TENNESSEE**
**Western Division**

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| **A.C., by her next friend and mother,J.C., her father, B.C.; and J.C. and B.C., the parents, Individually.** | § § § § § | |
| **Plaintiffs,** | § § § | |
| **vs.** | § § | **Case No.__________________**<br>**JURY DEMANDED** |
| **SHELBY COUNTY SCHOOL DISTRICT;** | § § § | |
| **Defendant.** | § § | |

## COMPLAINT

### I. PRELIMINARY STATEMENT

1. This is an action by A.C., a seven-year old student with Type I diabetes and severe food allergies who was being schooled at a Shelby County public elementary school in Arlington, Tennessee known as Bon Lin Elementary, and her parents, J.C. and B.C. They seek protection against and damages for retaliatory action taken by the Shelby County School District ("the District") in response to their federally protected complaints to the District and to the United States Department of Education's Office of Civil Rights (OCR).

2. The District's actions, set forth more fully herein, violate section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and Title II of the Americans with Disabilities Act (ADA, ADA-AA), 42 U.S.C. §12131.

3. For relief, Plaintiffs seek injunctive remedy of non-retaliation, compensatory damages for the significant emotional and financial harm caused by the District, and punitive damages for the District's retaliation for Plaintiffs' exercise of federally guaranteed rights, along with attorneys' fees and costs.

## II. PLAINTIFFS

4. The Plaintiffs are A.C, a seven-year old student of the District, and her parents, J.C. and B.C.

5. Plaintiffs are residents of Shelby County, Tennessee, and citizens of the United States. They live in Arlington, Tennessee.

## III. DEFENDANT

6. Defendant, Shelby County School District, is a local school district organized under the laws of Tennessee. It is a local education authority, and it is responsible for avoiding discrimination on the basis of disability, for providing related aids and services to students with disabilities, for complying with Tennessee law, including Tenn. Code Ann. §49-5-415 for diabetes, and for resisting retaliation against persons who make good faith complaints of discrimination/retaliation/failure to accommodate.

7. The District is bound by the Americans with Disabilities Act,[1] and its amendments, as well as section 504 of the Rehabilitation Act.[2]

## IV. JURISDICTION AND VENUE

8. This action arises under the laws of the United States, and therefore this Court has jurisdiction pursuant to 28 U.S.C. §1331 (federal question).

9. This action also arises under the following federal statutes: The Americans with Disabilities Act of 1990 (ADA), Pub.L. No. 101-336, 104 Stat. 327 (1990), 42 U.S.C. §§ 12101 et seq., amended by the Americans with Disabilities Amendments Act (ADA-AA) with an effective date of January 1, 2009, which, at Title II of the ADA, prohibits discrimination in the provision of public services. Section 202 of the Act, 42 U.S.C. §12132 (Supp.1991), the Rehabilitation Act of 1973, §§504 and 505, as amended, 29 U.S.C.A. §§794 and 794a, including the conforming amendment of the ADA-AA which changes the definition of "disability" under §504 to conform to the definition of "disability" under ADA-AA. Both the ADA and §504 prohibit retaliation against persons with disabilities, or persons who advocate on behalf of a student's education or who have filed a complaint with the Office of Civil Rights (OCR).

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1 The District is a covered "public entity" under the ADA. Title II's definition of "public entity" includes "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. 12131(1)(B).

2 Similarly, the District is voered by the Rehab Act because it receives federal financial assistance.

10. Venue is properly in this Court pursuant to 28 U.S.C. §1391, in that all parties reside in this Judicial District and the matters at issue arose in this Judicial District.

**V. LEGAL AND FACTUAL BASES FOR THIS LAWSUIT**

11. Cast in negative terms, Section 504 of the Rehabilitation Act, 29 U.S.C

§ 794, bars all federally funded entities (governmental or otherwise) from discriminating on the basis of disability. Section 504 states, in relevant part:

> No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a).

12. Defendant School System receives federal financial assistance and is covered by Section 504.

13. The Americans with Disabilities Act of 1990, at 42 U.S.C. § 12132, with its Amendments effective January 1, 2009, extends the nondiscrimination rule of section 504 of the Rehabilitation Act to services provided by any "public entity" (without regard to whether the entity is a recipient of federal funds).

14. Title II of the ADA prohibits discrimination in the provision of public services. Section 202 of the Act, 42 U.S.C. § 12132 (Supp.1991), provides:

> [N]o 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.

15. Both 504 and the ADA prohibit retaliation against any person who has advocated on behalf of a child's education, or participated in a proceeding concerning the child's education.

16. Plaintiff A.C. has "Type 1" diabetes, formerly known as "juvenile diabetes" or "insulin dependent diabetes." Type 1 diabetes is a disease in which the body (the pancreas) does not produce insulin. Persons with Type 1, like A.C., must receive insulin injections or use an insulin pump to stay alive. A.C. uses an insulin pump worn at the waist with infusion at the hip or buttocks area. She utilizes a blood glucose monitor, and receives insulin to assist with her blood glucose level.

17. Additionally, Plaintiff A.C. has severe food allergies, particularly allergies to peanut products. She wears a medic-alert bracelet to notify others of her allergies. She also carries an "Epipen Jr.," a small device filled with Epinephrine (an adrenaline) to treat allergic reactions.

18. Due to her diseases and conditions, Plaintiff A.C. is "disabled," owing to the substantial limitations to her endocrine function (a "major bodily function") caused by her Type 1 Diabetes, as well as the substantial limitations to, *inter alia*, her major life activity of "eating," "digestion," "learning," "breathing," and "caring for herself" caused by her diabetes and severe food allergies. 42 U.S.C. 12102(2). Indeed, without mitigating measures of insulin and/or epinephrine, Plaintiff A.C. would *die* and, therefore, be substantially limited in *all* major life activities. Accordingly, Plaintiff A.C. needs various reasonable accommodations in the school setting, including assistance with diabetes care, opportunity for frequent monitoring and self-care, and avoidance of certain food products.

19. Beginning in 2007, the parents, Plaintiffs J.C. and B.C., engaged in protected activity under the ADA-AA and section 504. They complained, internally to the District, and externally to the Office of Civil Rights (OCR), that the District was engaging in discrimination against their daughter, A.C., on the basis of her disabilities. The complaint of discrimination included, *inter alia*, (1) the District refusing to provide A.C. an education to come to school because of her disability and the District's unpreparedness to meet her needs; (2) the District suggesting A.C. be segregated through transfer to a different school where a nurse would be present; (3) the District's refusal to administer the Glucagon shot; and (4) generally, being *so* ignorant of A.C's needs in terms of testing and monitoring of diabetes, and safeguarding A.C. from peanut products, as to endanger the child's welfare.

20. Additionally, J.C. and B.C. complained to the District about the lack of a peanut-free classroom. These complaints resulted in letters from the District to fellow parents, making them aware of the potentially life-threatening allergy of A.C., and making them sensitive to the avoidance of peanut-free products. It also resulted in accommodations in the cafeteria and by A.C.'s teacher monitoring the lunchroom, as well as a peanut-free classroom.

21. A.C. and B.C.'s protected activity, their complaints, were met with resistance and, ultimately, reprisal by the District. The District's own principal, Kay Williams, intended to leave a private voice mail message with the school nurse, Barbara Duddy, of the Shelby County Health Department. However, Ms. Williams mistakenly left the voice mail message upon J.C.'s voice mail, stating that J.C. was "out to lunch," "does not reason or have any common sense," and otherwise belittling J.C.

22. Kay Williams did state, in reference to a 504 meeting, quote:

> Hey Barbara, um, I know we are having a meeting tomorrow about Ms. [C.]. This is Kay Williams from Bon Lin. She is here causing all kinds of confusion and Sanji has already broken down and cried. Um, this woman is out to lunch. Um, my teacher had ten minutes for lunch because she is trying to make sure there are no peanut people by her and now she claims the kid did sit by her with peanut butter. I mean, yet she doesn't want the child sitting at another table because she doesn't want her singled out. Um, I don't know what to do with this lady anymore. She does not reason or have any common sense. So you, know, that, uh, since I am the one with common sense, I am going to have a little problem with her. But at any rate, love ya, and I'll see you tomorrow, unless you want to call . . . 937-3382. Bye.

23. Plaintiffs continued to work closely with the Office of Civil Rights, given the continuing non-compliance and intransigence from the District. OCR's assigned case manager would warn the Plaintiffs that this particular school, Bon Lin, due to its principal's attitude, indifference, and view of her own authority, could be particularly difficult to interact with, a fear made real by the Principal's voice message.

24. By 2008, due to Plaintiffs' federally protected complaints, and their work with OCR, the District had agreed to take class-wide corrective actions for its conduct. The corrective action included, generally, the development of a procedure for school administrators to follow permitting students to have blood glucose levels tested and monitored in the classroom and, when necessary, to take appropriate action such as administering insulin or allowing the child to eat a snack. It also included permission for students with diabetes to self-test in any place, at any time, in school, or during a school-sponsored activity. Students could also carry diabetes testing equipment and have access to food and water, as needed.

25. The District also agreed to modify its students' rights and equal opportunity policies. The District provided copies of its policies to OCR in December of 2008.

26. Additionally, effective December 10, 2008, the District adopted a policy for "Accommodating Students with Diabetes," which set forth applicable Tennessee law, the right to an Individual Health Plan, the Parent's Rights and Responsibilities, the role of

School Volunteers and Blood Glucose Monitoring, School Responsibilities to Students with Diabetes, and Student's Rights.

27. Clearly, the District knew of Plaintiffs' history of complaints about inadequacy of the District's policies and care toward A.C., and the Plaintiffs' complaints to OCR.

28. On or about July 23, 2009, OCR completed its review and monitoring of the Plaintiffs' complaint against the District. This followed receipt of reports from the District dated December 2, 2008, January 30, 2009, and April 2, 2009. OCR indicated that the District had fully complied with the agreements to date, and that no further monitoring was required relative to Plaintiffs' triggering complaint.

29. While the District begrudgingly complied with certain obligations, it did seek reprisal against Plaintiffs within a few months of OCR's ceasing to monitor the District's compliance with the agreements with OCR.

30. On or about October 30, 2009, the District placed or encouraged the placement of an "anonymous" call to the Department of Children's Services. Given the nature of the call, the timing of the call, the Plaintiff's history with the District, and the specific information being alleged, it was apparent the call was made by the District.

31. On the evening of October 30, 2009, at approximately 7:00 p.m., the State of Tennessee's Department of Children's Services (known as "Child Protective Services," or "CPS"), arrived unannounced at Plaintiffs' home. CPS stated they had been referred based upon emergency circumstances of "medical maltreatment" of A.C. by the parents, J.C. and B.C.

32. The allegations of emergency circumstances of medical maltreatment were false, defamatory, made in bad faith, and for intentionally retaliatory purposes by the District.

33. The allegations and the investigative process, though totally unfounded, did cause A.C., J.C. and B.C. to suffer severe emotional distress. J.C. and B.C. were required to hire an attorney, undergo lengthy investigation, and read and consider frightening CPS literature about the CPS investigative process which included the prospect of losing their child. They required assistance from their physician, and weathered investigative bureaucracy while fearing a worst-case scenario. The process also frightened A.C.

34. On or about November 12, 2009, Plaintiff A.C.'s treating endocrinologist, Dr. Kashif A. Latif, wrote a letter in support of A.C.'s parents, stating in relevant part:

> [A.C.'s] diabetes care from her family has been very appropriate. Her parents are following protocol for diabetes control and insulin pump management. They also make sure that she attends her appointments regularly.

> [A.C.'s] mother asked me to write this letter, as there is a concern regarding the child's care. From my perspective the care provided by her parents is completely appropriate. There is no neglect in caring for this disease, which is difficult to handle in a child this age.

35. On or about December 15, 2009, CPS made written findings that the case was "UNFOUNDED for abuse/neglect."

36. Plaintiffs continue to fear that the District will take further retaliatory action against them due, in part, to the principal's voicemail and the false CPS report.

37. Plaintiffs now file this suit in this United States District Court to address Defendant's retaliatory actions against these Plaintiffs.

## V. LEGAL CAUSES OF ACTION

38. The foregoing paragraphs are incorporated herein.

39. Based thereon, Plaintiffs bring the following legal causes of action against the District:

**A. Retaliation under Section 504 of the Rehabilitation Act;**

**B. Retaliation under Title II of the ADA/ADA-AA.**

40. Plaintiffs respectfully pray for the following relief:

a. Injunctive relief proscribing any further retaliation against A.C. or her parents, J.C. and B.C;

b. An award of appropriate compensatory and punitive damages under the ADA and Rehabilitation Act (or either of them), for the intentional and retaliatory violation of Plaintiffs' rights; and

c. An award of costs and reasonable attorneys' fees.

41. A TRIAL BY JURY IS HEREBY DEMANDED.

Respectfully Submitted,

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