

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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M.S., minor child	:	:
through next best friend	:	:
MARIALISA SHIHADDEH	:	:
and	:	:
MARIALISA SHIHADDEH	:	CIVIL ACTION #
RAYMOND SHIHADDEH	:	
	:	
Plaintiffs	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
MARPLE NEWTOWN SCHOOL	:	
DISTRICT	:	
and	:	
MARPLE NEWTOWN BOARD OF	:	
SCHOOL DIRECTORS	:	

COMPLAINT

Plaintiffs, by and through their attorney, Robert B. Gidding, Esq. hereby
aver the following:

Parties

1. Plaintiff M.S. is a minor child born February 20, 1994 and at all times relevant hereto a student registered in the Marple Newtown School District residing at 220 Bourne Drive, Broomall, PA 19008 in the Eastern District of Pennsylvania.

2. Plaintiffs Marialisa and Raymond Shihadeh are the parents of M.S. and at all times relevant hereto reside at 220 Bourne Drive, Broomall, PA 19008 in the Eastern District of Pennsylvania.

3. Defendant Marple Newtown School District is located at 26 Media Line Road, Newtown Square, PA 19073 within the Eastern District of Pennsylvania.

4. Defendant Marple Newtown Board of School Directors conduct business on behalf of the Marple Newtown School District at 26 Media Line Road, Newtown Square, PA 19073 within the Eastern District of Pennsylvania.

Jurisdiction and Venue

5. This action constitutes a federal question under 28 U.S.C. section 1331 and the Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101 , 12131 and section 504 of the Rehabilitation Act of 1973, , 29 U.S.C. sec. 794, and 34 CFR section 104.1—104.39

6. The plaintiffs and defendants reside in the Eastern District of Pennsylvania and all acts alleged took place within the Eastern District of Pennsylvania.

Facts

7. M.S. attended the sixth, seventh, and eighth grades at the Paxon Hollow Middle School within the Marple Newtown School District (hereinafter “district”)

8. During the eighth grade, the district identified M.S. as a student with a disability and entered into “504 Agreement” which specified that M.S. needed specially designed instruction and accommodations in her educational program.

9. In or about November, 2007, during M.S.’s eighth grade school year, M.S.’s sister Emily was molested by B.C. a male minor child who lived on the same block as M.S.’s family. B.C. also raped and sodomized his sister, J.C. who lived with B.C. and his family.

10. Marialisa Shihadeh, mother of M.S., (hereinafter “mother”) did not find out about these crimes against her daughter E.S. until several months later before the start of ninth grade for M.S.

11. B.C. was arrested in June, 2008 and eventually prosecuted and convicted (adjudicated) of these crimes in or about August, 2008.

12. B.C.'s family, neighbors of M.S.'s family, were long-time friends until B.C. attacked and victimized E.S. After mother learned of the crimes in February, 2008, the families became estranged enemies which raised tensions between the neighboring families to a fever pitch in that their proximity forced them to interact with each other daily.

13. B.C. lived with a minor brother named J.C. J.C. became estranged from M.S. and engaged in hostile behavior towards M.S. during confrontations in their neighborhood.

14. M.S., who was 14 years old at the time of her sister's molestation, was traumatized by the molestation of her sister E.S. by B.C.

15. M.S. became traumatized in the presence of B.C., her sister's molester, and also in the presence of J.C. because J.C. brought up the pain and trauma of her sister's victimization and the hatred between the two families.

16. M.S. started ninth grade in September, 2008 at the Marple Newtown High School, her first year in a new school.

17. Her Mother discovered that (1) B.C., the convicted molester, would be attending the same school as M.S. and (2) that J.C. would be attending the same school as M.S. and would be placed in the same classes as M.S.

18. M.S. began ninth grade with J.C. in her classes and B.C. in the same building.

19. Immediately, M.S.'s school performance deteriorated—she started cutting classes and receiving detentions, problems she had not shown before ninth grade.

20. M.S.'s ability to function in school and her ability to learn was substantially harmed by the presence of J.C. in her classes and the presence of B.C., the convicted molester, in the building.

21. J.C. harassed M.S. in class by constant staring, leering and “staring her down”, throwing a chair in her path, and body language which adversely affected M.S. and re-traumatized her regarding her sister's molestation and the hatred between the two families. B.C. pointed cameras at M.S. in school hallways. Thus, M.S. did not feel safe in the presence of J.C. or B.C.

22. Mother stridently campaigned to convince the district to separate M.S. from J.C. and B.C. This started in or about August, 2008 and ended in December 2010; that campaign consisted, inter alia, of telephone calls, letters, emails, and meetings with school personnel, including the Superintendent of Schools, Merle Horowitz. Mother also publically questioned whether B.C. , the convicted

offender, presented a threat to nursery school children who were located in the same school building. In addition, she reported her concerns to a newspaper reporter, Gil Spenser of the Daily Times of Delaware County who published an article in April, 2009.

23. The district refused to separate M.S. and J.C. during the entire ninth grade year, 2008-2009.

24. During the ninth grade year, M.S.'s school performance worsened and her disciplinary incidents increased.

25. M.S. started tenth grade in September, 2009.

26. Again in tenth grade, the district assigned J.C. to M.S.'s classes and M.S.'s traumatization, anxiety, depression continued.

27. M.S.'s tenth grade school performance deteriorated further with low grades, temporary suspensions, and detentions.

28. M.S.'s psychotherapist from Springfield Psychological Associates diagnosed M.S. with anxiety disorder and post-traumatic stress syndrome and recommended emotional support educational programming to remove her from classes with J.C.

29. Mother signed a release permitting the district to communicate directly with M.S.'s psychotherapist. This psychotherapist communicated directly with the district's guidance counselor.

30. Despite the psychotherapist's input, during the tenth grade, the district refused to separate M.S. and J.C.

31. M.S. started eleventh grade in September, 2010.

32. J.C. again was assigned to M.S.'s classes in eleventh grade.

33. At the start of eleventh grade, M.S. enrolled in a vocational course of instruction in cosmetology which would require her to attend courses for three periods a day outside the high school building; but she still had to attend three periods a day at the high school. This vocational placement did not work out well and M.S. returned to regular classes in November, 2010.

34. M.S. enrolled in this out-of-building placement to escape classes with J.C.

35. Despite the continuing campaign of mother, the district refused to separate M.S. and J.C.

36. M.S. continued to carry the diagnosis of Post-Traumatic Stress Syndrome and anxiety such that her medical doctor recommended that M.S. be removed from the high school and assigned to homebound instruction so as to avoid contact with J.C.

37. M.S.'s last day at the high school was December 20, 2010, when M.S. became hysterical because of the situation. The district agreed to provide homebound instruction starting January, 2011.

38. The mother filed complaints with the Marple Newtown Board of School Directors (hereinafter "Board") alleging discrimination and harassment.

39. The Board referred the complaints to the solicitor of Delaware County who represented the Board. The solicitor did not want to investigate his own client. To avoid conflict of interest and maintain impartiality, the solicitor assigned the investigation to an outside law firm where the solicitor's wife worked as a lawyer.

40. The solicitor's wife, Gabrielle Sereni, Esq., then conducted the investigation of the Board of School Directors and the district or, alternatively, played a major role in that investigation.

41. Plaintiffs believed that Ms. Sereni's firm could not function in an impartial and objective manner given Ms. Sereni's was the wife of the solicitor who represented the Board.

42. The law firm, in a written report, cleared the district and the Board of School Directors of any wrongdoing even though it could not interview the mother, M.S., J.C. or B.S., i.e., failed to interview the accusers and the alleged harassers.

COUNT ONE

Harassment of M.S. Under Section 504, 29 U.S.C. section 794(a)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-42 above as if set forth in full herein.

44. M.S. is an otherwise qualified individual with a disability.

45. Defendants excluded M.S. from participation in and or denied her benefits of or subjected her to discrimination under an educational program or activity receiving federal financial assistance.

46. Defendants, by failing to separate M.S. from B.C. and J.C., subjected M.S. to intimidation, abusive behavior based upon M.S.'s disability that was sufficiently severe and pervasive to create a hostile environment by interfering with or denying M.S. participation in or receipt of benefits, services, or opportunities in the school's programs.

47. Defendants failed to adopt an internal policy or grievance procedure to address discrimination until October 5, 2009.

48. Defendants knew of the harassment and intimidation of M.S. caused by the presence of J.C. in M.S.'s classes and B.C. in the same building and were deliberately indifferent to the consequences.

49. Defendants condoned the harassment and discriminatory treatment of M.S. in violation of 34 CFR 104.4(b)1((viii)).

50. Defendants failed to take prompt and effective action to stop the harassment, prevent the harassment, or remedy the effects of the harassment.

51. As a result of Defendants' conduct, plaintiffs have been harmed, humiliated, traumatized, and has been subjected to pain and suffering.

52. M.S. seeks compensatory damages, injunctive relief, and any other relief based on breach of contract and attorney's fees and costs and expert witness costs and fees and any other relief deemed appropriate.

COUNT TWO

Retaliation Against Parents of M.S. and M.S.

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-52 above as if set forth in full herein

54. Defendants have violated Section 504, supra, by retaliating against the parents of M.S. and M.S. herself because M.S.'s mother advocated stridently in the interest of M.S.

55. The mother and M.S. engaged in advocacy as described in paragraph 22, supra.

56. In addition, the defendants retaliated against the parents of M.S. and M.S. and the entire family of M.S. by invaded their privacy by (1) casting mother in a bad light in their investigation report, (2) sending that report to the minor children J.C. and B.C. and (3) to third parties who had no need to know about private details of M.S. and E.S.'s life.

57. No school district shall intimidate, threaten, coerce or discriminate against any individual for purposes of interfering with any right or privilege secured by this Act or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing. 34 C.F.R. section 100.7(e).

58. Mother and M.S. engaged in a protected activity and defendants knew that they were engaged in a protected activity.

59. Defendants took adverse action against mother and/or M.S. by suspending and disciplining M.S., by steadfastly refusing to separate M.S. and J.C. and other actions to be proved at trial.

60. Defendants' adverse actions were caused by the protected activity engaged in by plaintiffs.

61. Parents of M.S. and M.S. seek compensatory damages, attorney's fees, expert costs and fees, injunctive relief and any other relief deemed appropriate by the court.

COUNT THREE

Americans With Disabilities Act (“ADA”)

62. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-61 above as if set forth in full herein

63. Section 202 of 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 services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

64. The Third Circuit Court of Appeals has held that the standards that govern Section 504 Rehabilitation Act claims also govern ADA claims. Chambers v. School District of Philadelphia, 587 F.3d 176 (3d. Cir. 2009).

65. Plaintiffs seek compensatory damages, attorneys fees and costs and expert witness fees and costs for claims of harassment and retaliation as set forth above under the ADA.

WHEREFORE, plaintiffs seek judgment in an amount greater than \$150,000.00 and any other relief deemed appropriate by the court.

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