

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
CHARLOTTESVILLE DIVISION

JOHNNIE SMITH,

Plaintiffs,

v.

THE JAMES C. HORMEL SCHOOL OF
THE VIRGINIA INSTITUTE OF AUTISM,

AND

GREENE COUNTY PUBLIC SCHOOL BOARD,

Defendants.

CIVIL ACTION NO. 3:08-CV-00030

ORDER

JUDGE NORMAN K. MOON

For the reasons set forth in the accompanying memorandum opinion, the December 8, 2009, report and recommendation of United States Magistrate Judge Michael F. Urbanski is adopted, in part, and it is hereby ordered as follows:

1. One objection (docket no. 197) to the magistrate judge's report and recommendation, filed by defendant the James C. Hormel School of the Virginia Institute of Autism ("VIA"), is sustained, to the extent that I decline to adopt the magistrate judge's recommendation that plaintiffs' motion to dismiss (docket no. 96) be granted as to Count II (fraud) of VIA's counterclaims. Accordingly, plaintiffs' motion to dismiss (docket no. 96) VIA's counterclaims is denied.
2. The court will exercise its supplemental jurisdiction and retain the counterclaims (docket no. 89). The parties are directed to confer with

Magistrate Judge Urbanski within 10 days from the date of entry of the instant order to arrange a scheduling conference regarding the counterclaims.

3. All other objections are overruled.
4. The motion for summary judgment (docket no. 124) filed by the Greene County Public School Board is granted; accordingly, the Greene County Public School Board is terminated as a party to this litigation.
5. The motion for summary judgment (docket no. 126) filed by VIA is granted.
6. Plaintiffs' motion for partial summary judgment for denial of a free and appropriate public education to plaintiff Johnnie Smith (docket no. 160) is denied.
7. Plaintiffs' motion for partial summary judgment on contract claims (docket no. 161) is denied.
8. VIA's motion for leave to file deposition transcript under seal (docket no. 184) is denied.
9. VIA's motion for leave to amend its complaint (docket no. 198) is granted, and the Clerk of the Court is hereby directed to file the first amended complaint (attached as an exhibit to the motion for leave to amend).
10. Plaintiffs' "motion for leave to file demonstrative exhibit" (docket no. 202) is denied.

11. The Clerk of the Court is directed to send a certified copy of this order and the accompanying memorandum opinion to the pro se plaintiffs, to all counsel of record, and to United States Magistrate Judge Michael F. Urbanski.

It is so ORDERED.

Entered this 26th day of March, 2010.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE