

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

S.S., a minor, by his mother, S.Y., on behalf of himself)
and other similarly situated students, the)
PARENT/PROFESSIONAL ADVOCACY LEAGUE,)
and the DISABILITY LAW CENTER,)

Plaintiffs,)

v.)

CITY OF SPRINGFIELD, MASSACHUSETTS;)
DOMENIC SARNO, in his official capacity as Mayor)
of City of Springfield; SPRINGFIELD PUBLIC)
SCHOOLS; DANIEL J. WARWICK, in his official)
capacity as Superintendent of Springfield Public)
Schools,)

Defendants.)

CIVIL ACTION NO. 14-30116

**Leave to File Granted on
February 10, 2015, Dkt. No. 53**

FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. The City of Springfield (“City”), Springfield Public Schools (“SPS”), Mayor Sarno, and Superintendent Warwick (collectively “Defendants”) operate a discriminatory public school system that denies hundreds of children with a mental health disability equal educational opportunity and the opportunity to be educated with their peers without a disability.

2. Instead of providing these children the services they need to be successfully educated in the neighborhood and other schools attended by their peers (“neighborhood schools”), Defendants consign these children to the separate and inferior Public Day School.

3. The Public Day School is not a therapeutic learning environment. Children in the Public Day School do not have the same opportunity to learn and to graduate that is afforded their peers without a disability in Springfield’s neighborhood schools. Academic expectations

are low. Education is not the primary mission of the Public Day School, and students make little academic progress there.

4. Instead of fostering learning, the focus of the Public Day School is on behavior control using drastic methods including dangerous physical restraints, inappropriate forced isolation in padded rooms, threatened and repeated arrests, and suspensions for minor offenses. Far from being therapeutic, placement in the Public Day School is more likely to exacerbate a child's mental health condition than improve it.

5. The Public Day School pushes many students out of school altogether. Many students drop out due to the inferior education and punitive climate of the Public Day School. Others are detained in the juvenile justice system as a result of arrests at the Public Day School.

6. The Public Day School is physically segregated from SPS's neighborhood schools. It is located on three campuses and students consigned to the Public Day School are afforded zero opportunity to interact with students in SPS's neighborhood schools.

7. Tragically, the children placed in the Public Day School do not need to be there. These are children of great promise. They could be educated in neighborhood schools and given the same opportunity to progress academically and to graduate that is enjoyed by their peers without a disability. These children can be educated successfully in SPS's neighborhood schools with reasonable modification of SPS's programs and services and with the aid of appropriate school-based behavior services.

8. Defendants' failure to reasonably modify SPS's programs and services, and instead placing children with a mental health disability in a wholly segregated educational setting, violates the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 *et seq.*

9. The ADA mandates that Defendants (i) provide children with a mental health disability educational opportunities that are equal to and as effective as those provided other students; and (ii) serve students with a mental health disability in the most integrated setting appropriate to their needs, that is, the setting in which they have the greatest opportunity to be engaged with their peers without a disability. Defendants are violating both of the ADA's legal mandates.

10. The ADA imposes on Defendants the obligation to reasonably modify SPS's programs and services to avoid discrimination. Providing children with a mental health disability access to school-based behavior services -- to afford them equal educational opportunity and to enable them to be educated in neighborhood schools -- is a reasonable modification required by the ADA.

11. Plaintiff S.S., a sixteen year-old with a mental health disability who has been segregated in the Public Day School, brings this suit on behalf of himself and other similarly situated students. Plaintiff Parent/Professional Advocacy League ("PPAL") is a statewide, grassroots family organization that advocates for improved access to services for children with a mental health disability and their families. Plaintiff Disability Law Center ("DLC") is the statewide protection and advocacy system for Massachusetts, which provides protection and advocacy services for individuals with disabilities, including children with a mental health disability in SPS. Plaintiffs seek injunctive and declaratory relief for ongoing violations of the ADA, including an order that Defendants provide Plaintiff S.S. and the Plaintiff class with school-based behavior services in neighborhood schools to afford them an equal educational opportunity and enable them to be educated in neighborhood schools with their peers without a disability.

II. JURISDICTION AND VENUE

12. This court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. §§ 12131-12133, and 28 U.S.C. §§ 1331. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C. § 2202, and Rule 65 of the Federal Rules of Civil Procedure.

13. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391(b)(2), since all of the acts and omissions giving rise to these claims occurred in the Commonwealth of Massachusetts. Venue is proper in the Western Division since the individual Plaintiff and all of the Defendants reside or are located in that Division. Local R. 40.1(D)(1)(a).

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Plaintiff S.S. filed a Request for Hearing with the Massachusetts Bureau of Special Education Appeals (“BSEA”) on behalf of himself and a class of similarly situated students on June 18, 2013, and an Amended Request on July 22, 2013, seeking injunctive and declaratory relief. In particular, S.S. contended that SPS did not reasonably modify its programs and services to ensure that he and members of the class are afforded equal educational opportunity, including the opportunity to receive an education that is equal to and as effective as that provided other students, and to receive educational programs and services in the most integrated setting appropriate to their needs.

15. S.S. contended that SPS segregates him and similarly situated students in the separate and inferior Public Day School in violation of the ADA.

16. On October 15, 2013, upon the motion of SPS, a BSEA Hearing Officer dismissed the class claims on the ground that the BSEA had no jurisdiction to decide them.

17. An administrative hearing before the BSEA was held in this matter on January 22-24, 2014 to address S.S.'s individual claims.

18. On March 27, 2014, the BSEA Hearing Officer issued a ruling dismissing all of S.S.'s ADA claims. The Hearing Officer further ruled that S.S.'s placement and Individualized Education Plan were reasonably calculated to provide him a free appropriate public education under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*, M.G.L. c. 30A and c. 71B, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), codified at 29 U.S.C. § 794.

19. Having exhausted administrative remedies on behalf of himself and a class of similarly situated students, S.S. now files this First Amended Class Action Complaint seeking relief under the ADA. S.S. does not appeal the BSEA Hearing Officer's decision regarding his claims under the IDEA, M.G.L. c. 30A and c. 71B, or Section 504.

IV. PARTIES

A. Plaintiffs

20. Plaintiff S.S. is an African American 16 year-old youth with a mental health disability. He resides with his mother and younger siblings in Springfield, Massachusetts. His mother, S.Y., brings this action on his behalf.

21. Plaintiff PPAL is a statewide, grassroots family organization that advocates for improved access to services for children with a mental health disability and their families. Founded in 1991, PPAL is the Massachusetts state affiliate of the Federation of Families for Children's Mental Health, a national family-run organization that provides leadership at the national level. PPAL has assisted more than 7,000 Massachusetts families who are its constituents, including Plaintiff S.S. and his mother. In the twelve months prior to the filing of

the original Complaint, more than 150 Springfield families sought help from PPAL. Many of PPAL's constituents from Springfield (including families who have sought help from PPAL) have children with a mental health disability enrolled in SPS, including children who have been placed in the Public Day School or are at risk of being transferred by SPS into the Public Day School. Through a contract with an advocate based in Holyoke, Massachusetts, PPAL provides services to students in the Public Day School, and their families. PPAL's constituents, including families in Springfield, have a direct and active role in developing PPAL's advocacy activities. At least fifty-one percent of the members of PPAL's Board of Directors are parents of children with a mental health disability.

22. PPAL's primary place of business is 45 Bromfield St., Boston, Massachusetts 02108, and it has an additional office in Worcester, Massachusetts.

23. Plaintiff DLC is a private not-for-profit Massachusetts corporation that operates the statewide protection and advocacy system for Massachusetts pursuant to the Developmental Disabilities and Bill of Rights Act, ("DD Act") 42 U.S.C. § 15001, *et seq.*; the Protection and Advocacy for Individuals with Mental Illness Act, ("PAIMI Act") 42 U.S.C. § 10801, *et seq.*, and the Protection and Advocacy for Individual Rights ("PAIR") Act, 29 U.S.C. § 794e; and their implementing regulations. Under these federal statutes and implementing regulations, DLC is responsible for providing protection to and advocacy for the rights of Massachusetts residents with disabilities, including school students with a mental health disability.

24. DLC maintains its primary offices at 11 Beacon Street, Ste. 925, Boston, Massachusetts 02108, and has another office located at 32 Industrial Drive East, Northampton, Massachusetts 01060.

25. The Governor of Massachusetts designated DLC to be the protection and advocacy system for Massachusetts, pursuant to federal law. *See, e.g.*, 29 C.F.R. § 1386.20. Under federal law, DLC has the authority and the obligation to pursue such legal remedies as may be necessary to protect the rights of individuals with disabilities, including students with a mental health disability in the Springfield Public Schools. 42 U.S.C. § 15041, *et seq.*; 42 U.S.C. § 10801, *et seq.*; 29 U.S.C. § 794e.

26. DLC's constituents include students with a mental health disability in the Springfield Public Schools, including the Public Day School, and their families.

27. DLC's constituents have a direct and active role in developing DLC's advocacy activities.

28. As required by federal law, 42 U.S.C. §§ 10805 and 15044, DLC has a multi-member governing board, called the Board of Directors, which is responsible for the planning, design, implementation and functioning of the protection and advocacy system. The Board of Directors annually establishes DLC's priorities.

29. Sixty percent of DLC's Board of Directors are individuals with disabilities, and/or family members of individuals with disabilities.

30. In accordance with federal law, DLC has an Advisory Council for its advocacy activities under the PAIMI Act. The PAIMI Advisory Council is chaired by a person who has received or is receiving mental health services, and more than 60% of the members of the PAIMI Advisory Council are individuals who have received or are receiving mental health services, or are family members of such individuals.

31. The Board of Directors and the PAIMI Advisory Council include members who, as public school students, received services for or on account of their disabilities and members

who have children in public schools who are currently receiving services for or on account of their disabilities.

32. Each year, the Advisory Council solicits comments and suggestions from DLC's constituents about priorities. The Advisory Council annually convenes one or more public hearings for that purpose.

33. The PAIMI Advisory Council and the Board of Directors jointly develop DLC's policies and priorities for protecting and advocating for individuals with mental illness, who include students with a mental health disability. 42 U.S.C. §§ 10805 (a)(6) & (8). DLC's current case priorities include advocacy to "increase the availability of quality inclusive programs by representing students seeking less restrictive special education programs."

34. DLC maintains a grievance procedure for clients or prospective clients to ensure individuals with mental illness and other disabilities have full access to the services that it provides.

B. Defendants

35. Defendant City of Springfield operates and funds SPS, including all public school programs, services, and activities. The City is a public entity as defined by Title II of the ADA. 42 U.S.C. § 12131. The City's offices are located at 36 Court Street, Springfield, MA 01103.

36. Defendant Domenic Sarno is sued in his official capacity as the Mayor of the City of Springfield. As Mayor, Defendant Sarno supervises and is ultimately responsible for the operations of the executive departments of the City, including SPS and its compliance with federal law. He annually submits a budget to the City Council for SPS's funding. By City Charter, Mayor Sarno is the Chairman of the Springfield School Committee. Defendant Sarno's business offices are located at 36 Court Street, Springfield, MA 01103.

37. Defendant Springfield Public Schools is a public entity as defined by Title II of the ADA. 42 U.S.C. § 12131. SPS's business offices are located at 1550 Main Street, Springfield, MA 01103.

38. Defendant Daniel J. Warwick is sued in his official capacity as the Superintendent of the Springfield Public Schools. Pursuant to M.G.L. c. 71, § 37, he is appointed by the School Committee. Defendant Warwick is responsible for the daily operations of SPS, including its programs and services for students with a disability. Defendant Warwick's business offices are located at 1550 Main Street, Springfield, MA 01103.

V. CLASS ACTION ALLEGATIONS

39. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiff S.S. brings this suit as a class action on his own behalf and on behalf of the following class: All students with a mental health disability who are or have been enrolled in SPS's Public Day School who are not being educated in an SPS neighborhood school.

40. The class is so numerous that joinder of all members is impracticable. During the 2013-2014 school year, over 233 SPS students with a mental health disability were, or had been, enrolled in the Public Day School. Joinder is also impracticable because SPS routinely excludes new children from SPS's neighborhood schools and enrolls them in the Public Day School. In addition, most class members lack the means to maintain individual actions.

41. There are questions of law and fact common to the class, including whether Defendants are violating the ADA by, among other actions, employing policies and practices that:

- i. Deny S.S. and members of the class an opportunity to participate in and benefit from educational services that is equal to that afforded students without a mental health disability;
- ii. Deny S.S. and members of the class educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided students without a mental health disability;
- iii. Fail to provide S.S. and members of the class educational programs and services in the most integrated setting appropriate to their needs;
- iv. Fail to reasonably modify SPS's programs and services as needed to avoid discrimination; and
- v. Utilize methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of Defendants' educational programs to educate and meet the behavioral service needs of students with a mental health disability, including S.S. and the class.

42. The named Plaintiff S.S.'s claims are typical of the claims of the class.

43. The Plaintiff class includes members who are PPAL and DLC constituents.

44. Plaintiff S.S. will fairly and adequately protect the interests of the class. Plaintiff S.S. will vigorously represent the interests of the unnamed class members, and all members of the proposed class will benefit from Plaintiff S.S.'s efforts. There is no conflict between the interests of Plaintiff S.S. and the proposed class.

45. Defendants have acted and continue to act on grounds generally applicable to the Plaintiff class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

VI. THE AMERICANS WITH DISABILITIES ACT

46. Congress enacted the ADA, 42 U.S.C. § 12101 *et seq.*, to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and to provide strong and consistent standards for identifying such discrimination. 42 U.S.C. § 12101(b)(1)&(2).

47. The ADA is based on Congress's findings that, *inter alia*, (i) "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem," 42 U.S.C. § 12101(a)(2), and (ii) "individuals with disabilities continually encounter various forms of discrimination, including ... relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5).

48. In enacting the ADA, Congress also found that "discrimination against individuals with disabilities persists in such critical areas as ... education." 42 U.S.C. § 12101(a)(3).

49. Title II of the ADA mandates 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." 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130.

50. Title II of the ADA applies to all of the activities of public entities, including providing education. Each Defendant is either a public entity subject to Title II of the ADA or an official responsible for supervising the operations of a public entity subject to Title II of the ADA. 42 U.S.C. § 12131(1).

51. The discrimination prohibited under Title II of the ADA includes the needless isolation or segregation of persons with disabilities. *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999) (“unjustified institutional isolation of persons with disabilities is a form of discrimination”); *see also* 2011 *Statement of the US Department of Justice on Enforcement of the Integration Mandate of Title II of the ADA and Olmstead*, June 22, 2011 (“DOJ 2011 Statement”).

52. The ADA directs the Attorney General to promulgate regulations enforcing Title II of the ADA and provides guidance on their content. The regulations promulgated by the Attorney General require public entities to “make reasonable modifications” to their programs and services “when the modifications are necessary to avoid discrimination.” 28 C.F.R. § 35.130(b)(7).

53. The regulations also specify that it is unlawful discrimination for a public entity to:

- i. “Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” 28 C.F.R. § 35.130(b)(1)(ii);
- ii. “Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others,” 28 C.F.R. § 35.130(b)(1)(iii);

- iii. Fail to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities,” 28 C.F.R. § 35.130(d), which the Attorney General has defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible,” 28 C.F.R. pt. 35, App. A, p. 450; or
- iv. “[U]tilize criteria or methods of administration ... [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities,” 28 C.F.R. § 35.130(b)(3)(ii).

54. Congress specifically provided for a private right of action to enforce Title II. 42 U.S.C. § 12133 (incorporating the remedies and enforcement procedures available under Title VI of the Civil Rights Act, which includes a private right of action).

55. This private right of action encompasses the right to privately enforce the Title II regulations. *See* DOJ 2011 Statement at 4 (“[P]rivate individuals may file a lawsuit for violation of the ADA’s integration mandate. A private right of action lies to enforce a regulation that authoritatively construes a statute.”).

56. The Title II regulations upon which Plaintiffs rely were promulgated at the specific direction of Congress and do not impose obligations beyond the reach of Title II. 42 U.S.C. § 12134(a).

VII. STATEMENT OF FACTS

A. The Springfield Public Schools

57. Defendant SPS is the second largest school district in Massachusetts, providing educational programs and services to approximately 25,826 children. Its annual budget for the fiscal year 2014 is \$357,868,724. Approximately 62.2% of the children served are Hispanic and 20.2% are African American.

58. SPS has identified approximately 5,032 (19.3%) of its students as having a disability and approximately 640 students (2.4% of all students) as having “emotional disturbance,” a classification used by SPS to refer to students with a mental health disability that interferes with their education. Of the approximately 640 so identified, 233 students (roughly one-third of all students classified as having an “emotional disturbance”) have been assigned to the Public Day School. The Public Day School has separate campuses for elementary, middle, and high school students.

59. SPS operates approximately 50 other schools in addition to the Public Day School.

60. Defendants have not reasonably modified the neighborhood schools to provide school-based behavior services for children with a mental health disability. For students like S.S. and members of the class, the essential components of school-based behavior services, which Defendants fail to provide, are: (a) a comprehensive assessment, including determination of the purpose and triggers for the child’s behavior; (b) a school-based intervention plan that relies on positive support, social skills training, a care coordinator, and adjustments as needed to curriculum or schedule; (c) training for school staff and parents in implementing the plan; and

(d) coordination with non-school providers involved with the child (collectively, “school-based behavior services”).

61. There is a professional consensus that such school-based behavior services are necessary to afford children like S.S. and Plaintiff class members an equal opportunity to advance academically and graduate and the opportunity to be educated in neighborhood schools along with their peers without a disability.

62. Instead of providing these school-based behavior services, Defendants routinely exclude such students from the neighborhood schools and transfer them to the Public Day School, where they receive an inferior education and are separate from their peers.

B. Springfield’s Public Day School

63. The Public Day School is exclusively for students with a mental health disability. It starts at kindergarten and extends through grade 12 (and up to age 21). During the 2013-14 school year, of the 233 students reported to be in the Public Day School program, 42 were at the elementary level, 63 at the middle school level, and 128 at the high school level.

64. The students in the Public Day School have many talents and strengths. They have the same aspirations as other SPS students. They have hobbies, enjoy sports, and would like to participate in extracurricular activities. After they graduate from high school, they would like to get good jobs, and many would like to go to college. Most have supportive families.

65. The Public Day School pushes many students out of school altogether. Students regularly drop out of the Public Day School because of its inferior education, lack of appropriate services, and punitive climate, including the high risk of suspension and arrest in the Public Day School. Some students are detained in the juvenile justice system as a result of arrests at the

Public Day School. In some cases, SPS insists that, for the student to continue to receive an education, he or she must go to a similarly segregated private school.

66. The Public Day School is inferior to and separate from SPS's neighborhood schools. Excluding students from the neighborhood schools needlessly segregates children from their peers without a disability.

67. The Public Day School operates as little more than a "warehouse" for children with a mental health disability. The Public Day School does not provide the same opportunities to learn that are provided to students without a disability. Academic instruction is "dumbed down" and secondary to behavioral control based on the unwarranted assumption that children in the Public Day School are incapable of achieving academically at the same level as their peers without a disability.

68. Children in the Public Day School have virtually no opportunity to engage in extracurricular activities. Students are denied access to nearly all extracurricular activities available in the neighborhood schools, including afterschool sports and clubs and activities devoted to art, drama, poetry, student government, and various cultures. They cannot play interscholastic sports against other schools within SPS or inter-district sports against teams from other school districts. They do not have the opportunity to participate in SPS sponsored college, military, and job informational and recruitment activities available to students in the neighborhood schools.

69. School-based behavior services are largely unavailable to children in the Public Day School, which does not use effective and professionally accepted practices for managing and improving the behavior of children with a mental health disability. Instead, the Public Day

School uses methods that interfere with their education and the ability to learn, and tend to exacerbate their mental health symptoms.

70. Lacking adequate training and support, Public Day School staff often resort to harsh and counterproductive responses to students' behavior, including dangerous physical restraints (that risk serious injury or death), unnecessary forced isolation (sometimes for multiple days), and inappropriate arrests and suspensions for minor offenses. The suspensions include formal out-of-school suspensions, in-school suspensions, and "informal suspensions" (e.g., where the Public Day School staff call parents and tell them to remove their child from school for the remainder of the day).

71. The Public Day School also relies heavily on the police for routine disciplinary matters. The City has arranged with the Springfield Police Department for armed and uniformed police officers, known as the "Quebec Unit" to be on the Public Day School campuses. Neither SPS nor the Police Department has adequately trained these officers to work effectively with students with a mental health disability.

72. The police regularly arrest youth for infractions of school rules that elsewhere would be handled through school disciplinary procedures.

73. In addition, Public Day School staff regularly use the police to impose severe discipline, such as physical restraints or placement in isolation rooms, for minor discipline issues such as not following directions or disrupting class.

C. *Plaintiff S.S.*

74. S.S., who has experienced traumas in his life, is diagnosed with depression and attention deficit and hyperactivity disorder, among other conditions. S.S. has a disability within the meaning of the ADA. His mental health condition substantially limits one or more major life

activities, including developing and maintaining relationships. S.S. is of a small physical stature; he is approximately five feet, four inches tall and weighs approximately 93 pounds.

75. S.S. is a talented artist who especially likes drawing and theater. S.S. is well organized and has a strong work ethic and keen sense of humor. He enjoys spending time with his family and likes to help his mother with chores around the house and caring for his younger siblings. He enjoys baking cakes, and going to parks, museums, amusement parks, and shopping.

76. S.S. has willingly and actively participated in treatment for his mental health disability. He has taken prescribed psychiatric medication and participates in outpatient mental health therapy. However, as a result of his mental health disability, S.S. sometimes in school talked out of turn, got out of his seat, used inappropriate language, or left class. On rare occasions, he fought with other students, mostly in response to being hit and/or bullied by other students. On occasion, S.S. responded physically to school staff when they tried to physically restrain him.

77. SPS transferred S.S. to the Public Day School approximately five years ago, when he was in the fourth grade. S.S. is currently a ninth grader.

78. SPS recently announced that, if S.S. wanted to continue his education, he must attend a private school that also segregates children with a mental health disability from their peers without a disability. S.S. and his mother have rejected this school as an appropriate setting for educating S.S. S.S. is being denied the opportunity to be educated in a neighborhood school, which is the most integrated setting appropriate to his needs.

79. S.S. could be educated in a neighborhood school if SPS were to reasonably modify its programs and services and provide S.S. with school-based behavior services.

80. At the Public Day School, S.S. was subjected to dangerous physical restraints, inappropriate forced isolation, suspensions, threatened arrests, and arrests for minor offenses such as swearing, talking out of turn, and getting out of his seat. Staff at the Public Day School enlisted police officers to help them physically restrain S.S. and to isolate him in a padded basement room, which, on at least one occasion, lasted for several days.

81. The Public Day School was not effective in improving S.S.'s behavior in school. To the contrary, it has eroded his self-esteem and exacerbated his mental health symptoms.

82. SPS has a High School Choice program, which allows students to choose their high school through a balloting process. Each high school has its own character and a unique focus, such as vocational education or science and technology. Although S.S. wanted to participate in the balloting process to choose his high school, as a student in the Public Day School, he was barred from doing so.

83. On November 18, 2014, S.S.'s mother withdrew S.S. from school because SPS was unwilling and unable to educate him in a safe and unsegregated setting.

D. The Plaintiff Class

84. S.S. is not alone in his experiences in the Public Day School. These experiences are endured by hundreds of children who also have a mental health disability. These children suffer the same injuries and require the same relief as Plaintiff S.S.

85. Defendants are denying, not only Plaintiff S.S., but also PPAL and DLC constituents and the Plaintiff class, equal educational opportunity and the opportunity to be educated in SPS's neighborhood schools.

86. N.D., a DLC and PPAL constituent, is an 11 year-old student who is friendly, outgoing and creative. She has been diagnosed as having post-traumatic stress disorder and an

anxiety disorder. N.D.'s legal guardian, her grandmother, wants N.D. to attend a neighborhood school with the aid of school-based behavior services. Instead, SPS placed N.D. at the Public Day School, where she received an inferior education and was subjected to dangerous physical restraints, inappropriate forced isolation, suspensions and threatened arrests for minor behavior such as spraying water on others. SPS recently announced that, if N.D. wanted to continue her education, she must attend a private school that, like the Public Day School, segregates children with a mental health disability from their peers without a disability.

87. Without school-based behavior services in the neighborhood schools, S.S., PPAL and DLC constituents, and the Plaintiff class will not have the same opportunity as their peers without a disability to learn and graduate, or to be educated in SPS's neighborhood schools. However, Defendants have failed to reasonably modify SPS's programs and services to provide S.S., PPAL and DLC constituents, and the Plaintiff class with school-based behavior services.

88. Through the acts and omissions described above, Defendants are:

- i. Denying S.S., PPAL and DLC constituents, and the Plaintiff class the opportunity to participate in and benefit from educational services that are equal to those afforded other students;
- ii. Denying S.S., PPAL and DLC constituents, and the Plaintiff class educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided other students;
- iii. Denying S.S., PPAL and DLC constituents, and the Plaintiff class the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs;

- iv. Failing to reasonably modify SPS's programs and services as needed to avoid discrimination against S.S., PPAL and DLC constituents, and the Plaintiff class; and
- v. Utilizing methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of Defendants' educational programs with respect to S.S., PPAL and DLC constituents, and the Plaintiff class.

COUNT I

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT

89. Plaintiffs re-allege the allegations in all preceding paragraphs as though fully set forth herein.

90. S.S., PPAL and DLC constituents, and the Plaintiff class are individuals with a disability within the meaning of the ADA. Their mental health condition substantially limits one or more major life activities, including developing and maintaining relationships.

91. As school-age children, they are qualified to participate in Defendants' educational programs and services. 42 U.S.C. § 12131(2).

92. Defendants the City of Springfield and SPS are public entities within the meaning of the ADA and Defendants Sarno and Warwick are officials responsible for running these public entities and supervising their operations. 42 U.S.C. § 12131(1).

93. Through the acts and omissions described above, Defendants are violating Title II of the ADA by:

- a. Denying S.S., PPAL and DLC constituents, and the Plaintiff class an opportunity to participate in and benefit from educational services that is equal to that afforded other students;

- b. Denying S.S., PPAL and DLC constituents, and the Plaintiff class educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided other students;
- c. Denying S.S., PPAL and DLC constituents, and the Plaintiff class the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs;
- d. Failing to reasonably modify SPS's programs and services as needed to avoid discrimination against S.S., PPAL and DLC constituents, and the Plaintiff class; and
- e. Utilizing methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of Defendants' educational programs with respect to S.S., PPAL and DLC constituents, and the Plaintiff class.

94. Granting relief to Plaintiffs would not fundamentally alter Defendants' programs, services, and activities.

95. The acts and omissions of Defendants have caused and will continue to cause S.S., PPAL and DLC constituents, and the Plaintiff class to suffer irreparable harm, and they have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

- A. Order that Plaintiff S.S. may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

- B. Order and declare that Defendants are violating the rights of S.S. and other similarly situated children under Title II of the ADA, 42 U.S.C. § 12101, *et seq.*, and its implementing regulations.
- C. Preliminarily and permanently enjoin Defendants, their successors in office, agents, employees and assigns, and all persons acting in concert with them to provide Plaintiff S.S., PPAL and DLC constituents, and the Plaintiff class with the school-based behavior services they need to enjoy equal educational opportunity and receive educational programs and services in the most integrated setting, as required by Title II of the ADA.
- D. Award Plaintiffs' attorneys' fees and costs as appropriate and permitted by law, including pursuant to 42 U.S.C. § 12205.
- E. Any other relief as this Court finds just and proper.

Dated: February 11, 2015

Ira Burnim*
Jennifer Mathis*
**BAZELON CENTER FOR MENTAL
HEALTH LAW**
1101 15th Street, N.W., Suite 1212
Washington, D.C. 20005
(202) 467-5730
jenniferm@bazelon.org
irab@bazelon.org

Robert Fleischner, BBO # 171320
Deborah A. Dorfman, BBO # 625003
Samuel Miller*, BBO # 624969
**CENTER FOR PUBLIC
REPRESENTATION**
22 Green Street
Northampton, MA 01060
(413) 586-6024
rfleischner@cpr-ma.org
ddorfman@cpr-ma.org
smiller@cpr-ma.org

* admitted *pro hac vice*

**S.S., a minor, by his mother, S.Y., on behalf of himself
and other similarly situated students, the
Parent/Professional Advocacy League, and the
Disability Law Center,**

By their Attorneys,

/s/ Carol E. Head

Robert E. McDonnell, BBO # 331470
Carol E. Head, BBO # 652170
Elizabeth M. Sartori, BBO # 672577
Jacqueline S. Delbasty, BBO # 676284
MORGAN, LEWIS & BOCKIUS LLP
1 Federal Street
Boston, MA 02110
(617) 951-8000
robert.mcdonnell@morganlewis.com
carol.head@morganlewis.com
elizabeth.sartori@morganlewis.com
jacqueline.delbasty@morganlewis.com

CERTIFICATE OF SERVICE

I, Carol E. Head, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 11, 2015.

/s/ Carol E. Head

Carol E. Head