

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA**

In the matter of:)
)
KYLE CAVANAUGH,)
)
Plaintiff,)
v.)
)
NANCY BUCKNER, in her)
official capacity as the)
Commissioner of the Alabama)
Department of Human)
Resources;)
ERIC MACKEY, in his)
official capacity as the)
State Superintendent of the Alabama)
Department of Education, et al.,)
)
Defendants.)

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Kyle Cavanaugh (hereinafter “Cavanaugh”), by and through undersigned counsel, hereby submits this Complaint against Defendants and alleges as follows:

A. PRELIMINARY STATEMENT

1. The United States Department of Justice (DOJ) has uncovered deeply concerning evidence of the State of Alabama’s discriminatory practices against children with disabilities residing in residential treatment facilities (RTFs). These

illegal and damaging practices have resulted in the systematic segregation of these children in on-site “schools” in RTFs as opposed to general education facilities. These facilities and this segregation have deprived these children of the opportunity to partake in general education settings and have denied them access to education of equal or equivalent quality as their non-disabled peers. Such blatant discrimination has inflicted severe harm on these children, starkly contravening the protections and equal opportunities assured to them under the Americans with Disabilities Act (ADA).

2. In their sobering letter of findings, the DOJ detailed a pattern of discrimination perpetrated by the State of Alabama, with notable instances of the State’s systematic segregation of children with disabilities. This reprehensible treatment obstructs these children from interacting with their non-disabled peers and limits their access to equivalent educational opportunities. Moreover, the State’s abject failure to integrate these children into general education settings and its reluctance to ensure parity in educational opportunities further amplifies the gravity of this discrimination. Consequently, these children receive subpar instruction, inadequate resources, and inferior support, clearly violating the ADA’s provisions.

3. This is an action for monetary damages related to Defendants’ discriminatory behavior as prohibited under the Americans with Disabilities Act of 1990 (ADA).

4. The ADA applies to Defendants' behavior in this case specifically through Title II, which states plainly 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.

5. Cavanaugh is a qualified individual with a disability protected under Title II of the ADA. A "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of such individual and a record of such an impairment or being regarded as having such an impairment . . ." 28 C.F.R. § 35.104. In the current case, one or more of the Defendants determined that Plaintiff did indeed have a disability and required Plaintiff to be housed at the facilities.

6. To comply with the ADA, public entities must "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).

7. In the current case, Defendants failed to provide an integrated setting and even failed to evaluate Cavanaugh for such integration.

8. As a proximate cause of Defendants' failures, and the provision of inferior services, Cavanaugh suffered educationally, financially, and socially.

9. Plaintiff therefore demands judgment against Defendants and requests, among other things, compensatory damages, statutory damages, attorneys' fees, and costs.

B. PARTIES

a. PLAINTIFF

10. At all times relevant hereto, Cavanaugh was a resident and a citizen of the State of Alabama. Defendants were required by federal law to provide educational opportunities to Cavanaugh pursuant to the ADA. Cavanaugh suffered severe injuries as a result of Defendants' failure to comply with the ADA and provide sufficiently integrated educational opportunities.

11. Cavanaugh was placed by Defendant(s) in numerous facilities since the age of eight (8). He remained in these facilities for approximately four (4) years. The highest level of education he received was the 8th grade. Plaintiff has been unable to obtain his GED or high school equivalency diploma.

12. As a proximate result of Defendants' failure to comply with the ADA, Cavanaugh suffered the injuries described herein. Plaintiff accordingly seeks damages associated with these injuries.

b. DEFENDANTS

13. Defendant Nancy Buckner is the Commissioner of the Alabama Department of Human Resources (DHR). Buckner is being sued in her official capacity only. DHR's headquarters is in Montgomery, Alabama. DHR is, among other things, responsible for "develop[ing] resources or the care of dependent, neglected, abused, or exploited clients and provide inspections of these resources for the purpose of

ascertaining that their capacity and adequacy comply with prescribed standards.¹” and “licensing all institutions and agencies, except those under State ownership and control or exempt from licensing by law, caring for, receiving, or placing minor children.”²

14. Cavanaugh was in the custody of DHR at the time of placement at the facilities.

15. Defendant Eric Mackey is the Superintendent of the Alabama Department of Education (DOE). Mackey is being sued in his official capacity only. The headquarters of DOE is in Montgomery, Alabama. The purpose of the Alabama Department of Education is “. . . to assist in executing the policies and procedures authorized by law and by regulations of the State Board of Education.”³ Further, Alabama statutes provide “the State Board of Education shall exercise, through the State Superintendent of Education and his professional assistants, general control and supervision over the public schools of the state . . .”⁴

16. Cavanaugh’s education was, at least in part, the responsibility of the DOE.

C. JURISDICTION AND VENUE

17. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331 and 1343.

¹ ALA. ADMIN. CODE r. 660-1-2-.01(2)(e) (1983).

² *Id.* at (2)(f).

³ Ala. Code § 16.2.2.

⁴ Ala. Code § 16-3-11.

18. Venue is proper in the Middle District of Alabama pursuant to 28 U.S.C. § 1391 because: (i) each Defendant is headquartered within the District and have sufficient contacts with this District to subject it to personal jurisdiction at the time this action is commenced; and (ii) the acts and omissions giving rise to this claim have occurred within the District.

D. RELEVANT FACTUAL BACKGROUND

DOJ REPORT

19. The DOJ conducted a thorough investigation regarding violations of Title II of the ADA. By employing more resources than is available to Plaintiff and securing the apparent cooperation of the State of Alabama’s counsel and official throughout the investigation, the DOJ produced a report generated on October 12, 2022, which will be referenced herein as “The Report” and is incorporated by reference as Plaintiff’s Exhibit “A.”

20. Cavanaugh’s experiences are consistent with the experiences of other children as outlined in The Report.

21. The Report devotes considerable time to not only outlining Alabama’s responsibilities under the ADA for children similarly situated to Cavanaugh, but also providing a persuasive statement of the legal posture of the ADA for these children.

22. The Report also publicizes the findings of an investigation conducted by DOJ, which supports Plaintiff’s claims about damages suffered due to the Defendants’

noncompliance with the ADA. It details interviews with persons of authority within the Defendants' programs, revealing a lack of processes for considering whether students similarly situated to Cavanaugh could attend a general education school for even part of the day.

23. The Report documents specific and systematic failure of Defendants to provide equal educational opportunities to students similarly situated to Plaintiff.

24. The Report cites the Defendants' failure to monitor the instructional hours, the quality of instruction, and the instructor certifications and qualifications of programs similar to the facility at which Cavanaugh was placed.

25. Cavanaugh's experiences at the facilities, including being deprived of educational opportunities by the Defendants, are consistent with the experiences of other children as detailed in The Report.

26. As discussed herein, Plaintiff's experience at the facilities was so inadequate as to cause severe injury to Plaintiff. Plaintiff has been subjected to discrimination because of Cavanaugh's then existing disability, a status protected by the ADA.

E. LEGAL CLAIM

COUNT I TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12131 *et seq.*

27. Plaintiff incorporates by reference all previous paragraphs of the Complaint herein.

28. Cavanaugh received primarily average grades in school and was never held back while in the general education system.

29. Before being placed in numerous facilities, Plaintiff is unaware of any screening process that was performed by Defendants to determine the greatest point of educational integration available to Cavanaugh.

30. While in the numerous facilities, Cavanaugh received an education that was substantially inferior to the education that Plaintiff had received previously. Further, such education was substantially inferior to the educational opportunities that Cavanaugh would have received at an ordinary public school.

31. Cavanaugh was at all times confined to numerous facilities while enrolled at numerous facilities. Cavanaugh was deprived of any opportunity to interact with non-disabled peers outside of the facilities.

32. Cavanaugh avers that while at numerous facilities, the education was inferior because he received zero educational opportunities and was unable to gain any institutionalized knowledge or further advance his education.

33. Cavanaugh was in multiple facilities for approximately four years.

34. At no time did Cavanaugh oppose educational placement in a community integrated system.

35. At no time did Cavanaugh receive adequate access to specialized or evidence-based educational and therapeutic support and services from a qualified professional.

36. When Cavanaugh left the facilities, he was substantially behind where he was expected to be in the ordinary course of his educational growth.

37. While at numerous facilities, Cavanaugh suffered, or witnessed others suffering, due to the inappropriate use of restraint and seclusion methods for controlling student behavior.

38. Because of the inferior education that Plaintiff received at these facilities, Cavanaugh has been unable to enroll in traditional public-school systems. In fact, Cavanaugh has been unable to advance academically or interact socially due to the lack of education he received while at the facilities. Cavanaugh is unable to seek employment opportunities or otherwise advance in life.

39. Title II of the ADA and its regulations provide 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. Part 35.

40. Defendants are public entities subject to Title II of the ADA, 42 U.S.C. § 12131.

41. Cavanaugh is a person with a disability within the meaning of 42 U.S.C. § 12102.

42. Defendants intentionally violated Cavanaugh's rights under the ADA regulations by excluding them from participation in and denying them the benefits of Defendants' services, programs, and activities on the basis of disability, and by subjecting them to discrimination in violation of 42 U.S.C. § 12132.

43. Defendants otherwise intentionally discriminated against Cavanaugh in violation of 42 U.S.C. § 12132.

44. As a direct and proximate cause of Defendant's violations of the ADA, Cavanaugh has suffered and continues to experience severe and grievous mental and emotional suffering, humiliation, stigma, and other injuries they will continue to suffer.

F. PRAYER FOR RELIEF

Wherefore, Plaintiff requests the following relief:

- A. Find that Defendants violated federal law;
- B. Find in favor of Plaintiff;
- C. Award Plaintiff compensatory damages;
- D. Award Plaintiff his reasonable attorney's fees and costs under 42 U.S.C. § 1988 and/or other applicable statutes;
- E. Plaintiff specifically requests only those remedies which are not available under the Individuals with Disabilities Education Act (IDEA); and
- F. Any other relief deemed necessary.

/s/ Thomas E. James

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