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6 Betty Westman

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SUPERIOR COURT
BY S. MITCHELL DEPUTY

7
8 **IN THE SUPERIOR COURTS OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF NEVADA**

10 **BLAKE WESTMAN,**
11 **by his guardian ad litem,**
12 **BETTY WESTMAN, and**
BETTY WESTMAN,
13 **Plaintiffs**
14
15 **vs.**
16 **TWIN RIDGES ELEMENTARY**
SCHOOL DISTRICT, a public entity,
17 **KENT RATEKIN, and DOES**
1 through 50, inclusive,
18 **Defendants.**

CASE NUMBER: **64555**

COMPLAINT FOR STATUTORY VIOLATIONS OF ADA [42 USC§12101]; IDEA [20 USC 1400, et seq] INTENTIONAL AND NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS; CAL BUS & PROF. CODE § 17200 NEGLIGENCE; STATUTORY VIOLATION OF CAL. ED. CODE § 230; et seq.

[Claims exceed \$25,000.00]

19 **INTRODUCTION**

20 Plaintiff Blake Westman is a seventeen year old boy who suffers from an incurable
21 neurological genetic disorder known as neurofibromatosis (hereafter "NF"). Its course is
22 unpredictable, but always progressive. As a result of this disorder, Blake has the following
23 difficulties: social perceptual disabilities, abstraction disabilities, language disabilities, learning
24 disabilities, and motor disabilities. He has an unusual running gait and awkward body
25 mannerisms. Other manifestations are: weak verbal memory, weak understanding of word
26 meanings, weak interpretation of language, poor understanding of language in social situations,
27 and disorganization in his communication.
28

1 Plaintiff enrolled in the Bitney Springs Charter High School, (hereafter "BSCHS") located
2 in Nevada City, as a sophomore in the fall of 1999. This was a new charter high school, operated
3 under the umbrella of the Twin Ridges Elementary School District [hereafter "District"]. Plaintiff
4 attended school in the Twin Ridges Elementary School District from the 2nd grade through the 8th
5 grade, and had an active "IEP" (individualized educational program) from kindergarten through
6 3rd grade. Blake continued to receive weekly help with language and social skills with a Special
7 Resource teacher through 6th grade, and he was in the adaptive PE Program.

8 On or about the first week of school in the fall of 1999 at BSCHS, another student, who
9 had been expelled from at least one other school, and admitted to BSCHS on a probationary
10 status, began to spread slanderous, inflammatory, and untrue rumors about the plaintiff. The claim
11 was that Blake had been responsible for having the student expelled from another school. When
12 plaintiff tried to set the record straight, he was threatened with expulsion by the head
13 administrator and principal, Kent Ratekin, who also taught plaintiff Blake Westman in three of his
14 classes. When Plaintiff's mother, Betty Westman, asked Mr. Kent Ratekin for a formal meeting
15 to mitigate the situation, and to explain Plaintiff's disabilities, she was told to stay out of Blake's
16 life. Blake was visibly affected by the unconscionable impasse with the school administration. As
17 Blake's level of depression increased, plaintiff's mother continued to request a formal meeting
18 with the head administrator. She was subsequently rejected at least three more times depriving
19 the plaintiffs of due process and equal protection under state and federal law, and plaintiffs were
20 subjected to insults, verbal abuse, defamation of character, cruel and insensitive remarks about
21 Blake looking strange, more threats of expulsion, and Plaintiffs were told never to contact Kent
22 Ratekin again.

23 By the coerced exclusion of Blake from the BSCHS, the district and its employees and
24 administrators have violated state and federal laws prohibiting violation of civil rights on account
25 of discrimination based upon neurological, social, and cognitive disabilities, and Plaintiffs thus
26 invoke for themselves and the general public, the jurisdiction of this Court to enjoin the unilateral
27 and involuntary imposition and threat of expulsion upon Plaintiff and others similarly situated
28 throughout the state of California. Plaintiffs complain of an egregious, unfair and unlawful

1 coercive exclusionary policy of the District by which defendants attempted to deprive Plaintiffs,
2 and other California public school students, of fundamental state and federal constitutional,
3 statutory, and common law rights enjoyed by all Californians. Additionally, Plaintiffs seek
4 damages for: (1) defamation; (2) assaultive behavior, (3) intentional infliction of emotional
5 distress, (4) negligent infliction of emotional distress and (5) negligent supervision, and (6) general
6 negligence.

7 **PARTIES**

8 **Plaintiffs in this action are:**

9 a. Plaintiff Blake Westman, a minor represented by his guardian ad litem Betty
10 Westman, is, and at all times material, has been, a resident of the County of Nevada, California.

11 b. Plaintiff Betty Westman, as an adult, seeks recovery in a individual and non-
12 representative capacity, and at all times material, has been a resident of the County of Nevada,
13 California.

14 c. Each plaintiff sues on his or her own behalf, on behalf of others similarly situated in
15 the state of California, and on behalf of the general public

16 **Defendants in this action are:**

17 d. Kent Ratekin, (hereafter "Ratekin"), an individual, sued individually and in his
18 official capacity. Plaintiffs are informed and believe and thereon allege that Ratekin was:

- 19 (1) employed by defendant Twin Ridges Elementary School District
20 and as the Principal at Bitney Springs Charter School;
21 (2) an active and licensed member of the California Teachers
22 Association;
23 (3) a resident of the State of California; and
24 (4) responsible in whole or in part for the wrongs alleged herein.

25 e. Twin Ridges Elementary School District is a local public entity charged with
26 educational responsibilities under the California Education Code. Plaintiffs are informed and
27 believe and thereon allege that the District is a state chartered "public school" and receives federal
28 funding.

1 f As to DOES 1 through 100, the true names and capacities of the defendants named
2 herein as DOES 1 through 100, inclusive, are unknown to plaintiffs, who therefore sue such
3 defendants by fictitious names pursuant to California Code of Civil Procedure Section 474.
4 Plaintiffs will amend this Complaint to show such true names and capacities when the same have
5 been ascertained.

6 **AGENCY**

7 At all times herein mentioned, the individuals named above in Paragraph "f," above, were
8 agents of defendant District, and engaged in the acts and conduct hereinafter alleged, were either
9 acting within the course and scope of that agency, or committed acts which were foreseeable by
10 the District given the particular knowledge the District holds with respect to each and every
11 defendant.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 5. Prior to the fall of 1999, Plaintiff Blake Westman was a student at schools
14 operated and administered by District for the previous seven years, with the exception of John
15 Woolman School for the 9th Grade.

16 6. As a result of the actions of the District and its administrators, the plaintiff Blake
17 Westman was discriminated against based solely on his disability.

18 7. Discrimination based on disability is prohibited by Section 504 of the Rehabilitation
19 Act of 1973, section 230 of the California Education code; Business and professions Code
20 §17200; 42 USC § 12101; and 20 USC § 1400, et seq.

21 8. On or about February 8, 2000 the plaintiffs filed tort claims with the District and
22 against Ratekin; those claims were duly denied by the defendants at a closed meeting of the
23 District on March 13, 2000. This action is timely instituted in compliance with Government Code
24 § 945.6.

25 **FIRST CAUSE OF ACTION**

26 (Violation of the Americans with Disabilities Act)
27 [42 USC § 12101, et seq]

28 Plaintiffs incorporate by reference paragraphs 1 through 8 as if fully set forth herein, and

1 for causes of action for themselves, others similarly situated and the general public allege that:

2 9. The Americans with Disabilities Act ("ADA") 42 USC § 12101, et seq prohibits,
3 inter alia, discriminatory practices involving public accommodations including public schools.
4 Plaintiff, Blake Westman is a qualified individual with a disability because his neurological
5 impairments substantially limit one or more of his major life functions. Plaintiff has disabilities as
6 enumerated in ADA § 201(2), above.

7 10. That the Bitney Springs Charter High School, a school operated by the District,
8 receives the benefits of federal funds via services provided to the District in the form of
9 educational services and rehabilitative services for students that are disabled within the meaning of
10 42 USC § 12132, and Welfare & Institutions Code § 4688(a).

11 11. That section 12132 of the ADA, and related sections, prohibit discrimination and
12 exclusion of students from benefits of services by the public entity based on disability where any
13 public entity receives the benefit of federal funds or assistance.

14 12. That Blake Westman was forcibly and illegally coerced to leave the BSCHS on
15 October 25, 1999, and curtail his education, by reason of discriminatory conduct of the District
16 and Ratekin which was unprivileged and in violation of the ADA.

17 13. That plaintiff's coerced exclusion from BSCHS resulted from no other reason than
18 the fact that plaintiff Blake Westman suffered from the effects of the social disabilities of "NF"
19 which the District and its administrator failed to appreciate, accommodate, or take into account.

20 14. Under section 12132 of the ADA, defendants excluded plaintiff and persons
21 similarly situated from participation in the BSCHS program because of cognitive and social
22 limitations which were disabling in nature, by failing to provide reasonable accommodation to wit,
23 by permitting the minor through his parent to participate in the charter school program and
24 receive the services mandated under said program.

25 **SECOND CAUSE OF ACTION**

26 **(Individual with Disabilities Education Act)**

27 Plaintiffs incorporate by reference paragraphs 1 through 14 as if fully set forth herein, and
28 for causes of action for themselves, others similarly situated, and the general public allege that:

1 15. This cause of action is advanced under the Individual with Disabilities Education
2 Act (hereafter "IDEA"), 20 USC § 1400, et seq.

3 16. The Plaintiff/minor student has profound learning and social disabilities as defined
4 by Government Code §§ 12955 and 12926; said minor was first assigned an IEP at age six. The
5 IEP became a permanent part of his student and matriculation folder, the file followed the plaintiff
6 from age six to the fall of 1999. The District and Ratekin were aware of the contents of the
7 cumulative file. In the fall of 1999, the parent of the minor requested meetings numerous times
8 with the District and its administrators concerning the validity, modification, or continued
9 accuracy of the IEP; those meetings were requested by the Betty Westman on various dates
10 including: 9/23/99; 9/24/99; 9/29/99; 9/30/99; 10/11/99; and 10/12/99. Each of these requests for
11 conference, meeting, or consultation to address the IEP were denied to the plaintiffs and
12 thwarted, or not granted on seasonable request; such denial of consultations was a denial of
13 constitutional rights to both due process and equal protection under the law. Education of All
14 Handicapped Children Act, 20 USC §1401, and 34 C.F.R. § 300.512.

15 17. Blake Westman is a child with a disability and as such is entitled to the protection
16 and benefits of the IDEA which requires that all children have available to them a free and
17 appropriate public education in the least restrictive environment. This directive requires that the
18 District provide special educational services consistent with the goals of the IEP. The District
19 failed to provide those services by duly considering the IEP and the socio-stressors then facing the
20 student. The response of the District in conducting or failing to conduct parent conferences to
21 address the IEP, and issues then compromising the student, was a failure to provide educational
22 benefits, and such conduct was reasonably calculated to deny the minor student educational
23 benefits.

24 18. As a direct and proximate result of statutory violations under (IDEA), which
25 constitute a denial of a free appropriate public education, the plaintiffs have been denied the
26 reasonable resolution of challenges and needed modification of the IEP, and thus the student was
27 forced or coerced into leaving the District by unlawful conduct of the defendant District and
28 Ratekin. Such coercive response was tantamount to constructive expulsion of Blake from the

1 District's charter school program in violation of law.

2 19. As a further direct and proximate result of violations of the statute, the plaintiffs
3 herein have been required to obtain alternate educational services from other resource teachers or
4 schools at considerable expense to the plaintiffs; further, in addition to economic damages
5 associated with the denial of educational benefits, the plaintiffs have incurred attorney's fees and
6 litigation costs in an amount to be proven on trial.

7 **THIRD CAUSE OF ACTION**

8 (Unfair business practices)
9 (California business and professions code §17200)

10 Plaintiffs incorporate by reference paragraphs 1 through 19 as if fully set forth herein, and,
11 for causes of action for themselves, others similarly situated, and the general public, allege that:

12 20. The California Unfair Practices Act (UPA), Cal. Bus & Prof. Code §§17000, et
13 seq., prohibits, inter alia, business practices which are "unfair" and /or "unlawful."

14 21. That Bitney Springs Charter High School, a school operated and
15 administered by the District, receives the benefits of federal funds via services provided to
16 District in the form of tutoring services and the purchase of library books.

17 21. That Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.,
18 prohibits discrimination based on disability by any entity receiving the benefit of federal
19 assistance.

20 **FOURTH CAUSE OF ACTION**

21 (Injunction against discrimination against persons
22 (suffering from disabilities)

23 Plaintiffs incorporate by reference paragraphs 1 through 22 as if fully set forth herein, and
24 for causes of action for themselves, others similarly situated, and the general public allege that:

25 23. Plaintiffs and all persons similarly situated in the State of California have no plain,
26 speedy, and adequate remedy at law to redress the irreparable harm which they will suffer if
27 defendants are not enjoined from their unlawful and unfair business practices.

28 24. Pursuant to the provisions of the UPA, Cal. Bus. & Prof. Code §17203, plaintiffs

1 the full measure of damages have been ascertained.

2 28. The conduct of administrator Ratekin was wilful, oppressive, and malicious within
3 the meaning of Civil Code § 3294, and demand is made that punitive or exemplary damages be
4 imposed to deter such conduct in others, and to punish the defendant Ratekin in contemplation of
5 the law; accordingly, request is made to introduce evidence of defendant's net worth so as to
6 provide the basis for calculating such award.

7 **SIXTH CAUSE OF ACTION**

8 **Defamation**

9 Plaintiffs incorporate by reference paragraphs 1 through 28 as if fully set forth herein, and
10 for causes of action for themselves, others similarly situated, and the general public allege that:

11 29. At diverse times between September and October of 1999 the defendant Ratekin,
12 while in the course and scope of his employ, did utter, publish, and make false and untrue
13 statements of and concerning the Plaintiffs. The publications made to third persons stated in
14 words and effect that the Plaintiffs were unstable both mentally and emotionally and in need of
15 psychiatric care and treatment. The statements were meant to injure or damage Plaintiffs by
16 suggesting they suffered from severe mental illness.

17 30. The statements as uttered were defamatory on their face, constitute libel per se,
18 were untrue, and did subject the Plaintiffs to scorn, obloquy, ridicule, and contempt in the
19 community.

20 31. The utterances of the words and the assignation of Plaintiffs' character by
21 defendants, as alleged above, were done with malice, hatred, ill will, fraud, and oppression within
22 the meaning of California Civil Code §3294, and thus an award of exemplary or punitive damages
23 is justified for the sake of example, and should be awarded to plaintiffs as prayed; and that the
24 exact amount of which is left to the discretion of the trier of fact on trial.

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1 about Plaintiffs' injuries.

2 46. Plaintiff, Blake Westman suffered severe emotional distress as a result of
3 defendants' conduct. Blake was fearful of defendants, and experienced general anxiety toward
4 attending school and experienced acute exacerbation of existing disabilities.

5 **NINTH CAUSE OF ACTION**

6 **(Negligent Supervision)**

7 Plaintiffs incorporate by reference paragraphs 1 through 46 as if fully set forth herein, and
8 for causes of action for themselves, others similarly situated, and the general public allege that:

9 47. Defendant District owed a duty to supervise its employees, namely the other
10 aforementioned defendants and staff, as well as the students who attended its schools.

11 48. Defendant District breached a duty owed to Plaintiffs when it failed to properly
12 supervise its employees, and when defendant District failed to properly protect Blake Westman,
13 from an enrolled student at BSCHS, without exercising control over the student body, nor did it
14 protect plaintiff against harassment which resulted from Districts' employees' discriminatory
15 conduct toward Plaintiff.

16 49. As a direct and proximate result of the negligent supervision by said defendants,
17 and each of them, as herein alleged, Blake Westman was injured in his health, strength and
18 activity, sustaining injury to plaintiff's body and shock and injury to plaintiff's nervous system and
19 person, all of which caused and continue to cause Blake Westman great mental, physical and
20 emotional pain and suffering.

21 **TENTH CAUSE OF ACTION**

22 **(General negligence)**

23 Plaintiffs incorporate by reference paragraphs 1 through 49 as if fully set forth herein, and
24 for causes of action for themselves, others similarly situated, and the general public allege that:

25 50. Defendants owed a duty to Plaintiffs to refrain from negligent acts which would
26 result in harm to plaintiffs. The status of Blake Westman as a student entrusted to the care of
27 defendants, who are educators, school administrators, and individuals and entities responsible for
28 oversight at its schools is the basis for this duty. That duty is set forth in Education Code §230.

1 51. On or about September-October 1999, defendants and DOES 1 through 100,
2 forced and coerced Plaintiff Blake Westman to remove himself from BSCHS as a member of that
3 student body.

4 52. Defendants breached that duty owed to Blake Westman when they caused harm to,
5 or failed to properly protect Plaintiff from harm by other students or the faculty.

6 53. As a direct and proximate result of the negligent acts of said defendants, and
7 each of them, as herein alleged, Plaintiff was injured in his health, strength and activity, sustaining
8 injury to plaintiff's body and shock and injury to plaintiff's nervous system and person, all of
9 which caused and continue to cause each plaintiff great mental, physical and emotional pain and
10 suffering.

11 DAMAGE ALLEGATIONS

12 Plaintiffs incorporate by reference paragraphs 1 through 53 as if fully set forth herein and
13 allege that:

14 54. As a direct, foreseeable, and proximate result of the wrongful acts of defendants
15 described above, Plaintiffs have suffered and will continue to suffer damages in an amount to be
16 proven at trial and in excess of the minimum jurisdiction of this Court.

17 55. As a further direct, foreseeable, and proximate result of said wrongful acts by
18 defendants, Plaintiffs have suffered and will continue to suffer fear, extreme stress, despair, and
19 mental pain and anguish, all to Plaintiffs' damage in an amount to be proven at time of trial.

20 56. As a further direct, foreseeable, and proximate result of said wrongful acts by
21 defendants, Plaintiffs have incurred attorney's fees and costs of suit in an amount to be
22 determined, for which Plaintiffs claim a sum to be established according to proof.

23 ATTORNEYS FEES AND COSTS

24 Plaintiffs incorporate by reference paragraphs 1 through 56 as if fully set forth herein and
25 allege that:

26 57. Plaintiffs' success in this action will result in the enforcement of important
27 civil rights affecting the public interest and will confer a significant benefit upon the general
28 public.

1 58. Private enforcement of the rights enumerated in this complaint is necessary, as no
2 public agency has pursued their enforcement.

3 59. Plaintiffs are incurring a financial burden in pursuing this action and it would be
4 against the interests of justice to require the payment of any attorney's fees or costs of suit from
5 any recovery that might be obtained herein.

6 60. Plaintiffs are therefore entitled to and do seek an award of attorney's fees and
7 costs of suit pursuant to Cal. Code of Civ. Proc. §1021.5.

8 **PRAAYER FOR RELIEF**

9 WHEREFORE, plaintiffs pray judgment against the defendants, and each of them, as
10 follows:

11 **Declaratory Relief**

12 1. For a declaration the particulars of which are set forth above;

13 **Injunctive Relief**

14 2. For a permanent injunction the particulars of which are set forth above;

15 **Damages**

16 3. For a money judgment for Blake Westman's physical pain and suffering, mental
17 anguish and emotional distress, according to proof;

18 4. For a money judgment for Betty Westman's physical pain and suffering, mental
19 anguish and emotional distress, according to proof;

20 **Restitution**

21 5. For the return of tuition, fees, and other sundry out of pocket costs and expenses
22 paid on Plaintiffs' behalf for the 1999 - 2000 school year.

23 **Attorneys' Fees and Costs of Suit**

24 6. For Costs of suit and attorney's fees;

25
26 **Other**

27 7. For prejudgment and post judgment interest; and

28 8. For any other relief that is just and proper.

1 Dated: August 1, 2000

LAW OFFICES OF R. ELLIS HARPER

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4 R. Ellis Harper
5 Attorney for Plaintiffs
6 **BLAKE WESTMAN**, by his guardian ad litem,
7 **BETTY WESTMAN**, and **BETTY WESTMAN**

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