

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

S.W., a minor, by S.G., his parent, and
S.G., in her individual capacity,

Ca.R., a minor, and Ch.R., a minor,
By D.R., their parent, and
D.R. in her individual capacity,

P.F., a minor, by A.F., his parent, and
A.F., in his individual capacity,

Plaintiffs,

-vs-

Case No: 14-CV-792

TONY EVERS, in his official capacity
as Wisconsin Superintendent of Public Instruction,
STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION,
ELKHORN AREA SCHOOL DISTRICT,
GREENDALE SCHOOL DISTRICT,
MUSKEGO-NORWAY SCHOOL DISTRICT,

Defendants.

**ANSWER OF DEFENDANTS GREENDALE SCHOOL DISTRICT
AND ELKHORN AREA SCHOOL DISTRICT**

The defendants, Elkhorn Area School District and Greendale School District (“Defendants”), by and through their attorneys Boardman & Clark LLP by David E. Rohrer and JoAnn M. Hart, answer the complaint as follows:

1. Admit that the State of Wisconsin has enacted Wis. Stat. § 118.51 governing open enrollment. Admit that Wis. Stat. § 118.51 allows students to transfer to a school district other than the one in which they reside. Lack knowledge or information sufficient to form a belief as to the level of popularity of the open enrollment program or the number of applications for open enrollment in the 2013-2014 school year, and therefore deny.

2. Deny all allegations contained in the first three sentences. State that paragraph 2 recites a legal conclusion which requires no answer.

PARTIES

3. Lack knowledge or information sufficient to form a belief and therefore deny.

4. Lack knowledge or information sufficient to form a belief and therefore deny.

5. Lack knowledge or information sufficient to form a belief and therefore deny.

6. Lack knowledge or information sufficient to form a belief and therefore deny.

7. Lack knowledge or information sufficient to form a belief and therefore deny.

8. Lack knowledge or information sufficient to form a belief and therefore deny.

9. Lack knowledge or information sufficient to form a belief and therefore deny.

10. Lack knowledge or information sufficient to form a belief and therefore deny.

11. Lack knowledge or information sufficient to form a belief and therefore deny.

12. Lack knowledge or information sufficient to form a belief and therefore deny.

13. Admit.

14. Admit that DPI is an agency of the state of Wisconsin with its offices and principal place of business as alleged. Admit that DPI and the Superintendent of Public Instruction are responsible for overseeing and administering Wisconsin's Open Enrollment Law. State that the remaining allegations recite legal conclusions and arguments that require no responsive pleading from these defendants.

15. Admit.

16. Admit.

17. Admit.

18. Lack knowledge or information sufficient to form a belief as to whether the defendants are *all* recipients of federal funding and therefore deny. State that the remaining allegations recite legal conclusions and arguments that require no responsive pleading.

JURISDICTION AND VENUE

19. State that paragraph 19 recites legal conclusions and arguments that require no responsive pleading.

20. State that paragraph 20 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

21. Admit that Defendants Evers and DPI are residents of the Western District of Wisconsin. Deny that the alleged events or omissions which form the basis for plaintiffs' claims occurred in the Western District of Wisconsin.

CAUSE OF ACTION FOR VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, THE ADA, AND SECTION 504

Factual Background

22. Deny that education as provided through and in accordance with the open enrollment law is a service, program or activity provided by the defendants. Admit that the statements attributed to the state statute, DPI website and Legislative Fiscal Bureau website are accurate. Affirmatively allege that the use of the word "program" within the quotations contained in paragraph 22 is irrelevant to plaintiffs' allegation that education as provided through and in accordance with the open enrollment law is a service, program or activity provided by the defendants.

23. Deny.

24. Deny.

25. State that the first five lines of paragraph 25 recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations. Lack knowledge or information sufficient to form a belief as to whether school districts in Wisconsin set quotas for students with disabilities under the open enrollment law each year and therefore deny. Deny that defendants Evers and DPI permit school districts to set separate quotas for children with disabilities. Lack knowledge or information sufficient to form a belief as to whether in 2013-2014 over 1000 children with disabilities were rejected for open enrollment based on school district decisions that special education spaces were not available and therefore deny. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

26. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

27. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

28. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny, except admit that the open enrollment form asks whether the pupil receives special education services and whether the pupil has an IEP.

29. Deny that Wisconsin law permits discrimination against children with disabilities. Lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore deny.

S.W.'s and S.G.'s experience with open enrollment

30. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

31. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

32. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

33. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny, except admit that defendant Elkhorn School District did receive an open enrollment application on behalf of S.W.

34. Lack knowledge or information sufficient to form a belief as to the truth of the allegations as to the Elmbrook and Whitefish Bay School Districts. Deny that S.W.'s application was rejected by the Elkhorn School District on the basis of S.W.'s disability and affirmatively allege that S.W.'s application was approved and any notification to the contrary was sent in error.

35. Deny the allegations as to the Elkhorn School District.

36. Deny the open enrollment law permits school districts to discriminate against children with disabilities. Lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph and therefore deny.

37. Deny the open enrollment law permits school districts to discriminate against children with disabilities. Lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph and therefore deny.

Ca.R.'s, ChR.'s and D.R.'s experience with open enrollment

38. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

39. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

40. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

41. Admit that D.R. applied under the Open Enrollment Law for both children to the Greendale School District. Admit that the Greendale School District denied the applications of Ca.R. and Ch.R. Lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore deny.

42. Deny the allegations as stated.

43. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

44. Deny the open enrollment law permits school districts to discriminate against children with disabilities. Lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph and therefore deny.

45. Deny the open enrollment law permits school districts to discriminate against children with disabilities. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

P.F.'s and A.F.'s experience with open enrollment

46. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

47. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

48. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

49. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

50. Deny the open enrollment law permits school districts to discriminate against children with disabilities. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

51. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny.

CLAIM FOR RELIEF

52. Deny that Wisconsin's Open Enrollment Law prevents the plaintiffs from being able to transfer to and receive an education from a school district other than the school district in which they reside solely because of their disabilities. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

53. State that paragraph 53 recites legal conclusions and arguments that require no answer.

54. State that paragraph 54 recites legal conclusions and arguments that require no answer.

55. State that paragraph 55 recites legal conclusions and arguments that require no answer.

56. State that paragraph 56 recites legal conclusions and arguments that require no answer.

57. State that paragraph 57 recites legal conclusions and arguments that require no answer.

58. State that paragraph 58 recites legal conclusions and arguments that require no answer.

59. State that paragraph 59 recites legal conclusions and arguments that require no answer.

60. State that paragraph 60 recites legal conclusions and arguments that require no answer.

61. Deny that Greendale School District and Elkhorn Area School District, in acting upon their open enrollment applications, deprived students with disabilities of their rights, privileges, or immunities secured by the Constitution and laws, or that any alleged deprivations were a result of discriminatory policies or discriminatory actions taken according to those policies. The remainder of the allegations in paragraph 61 are directed at other defendants, and therefore require no response by the Greendale and Elkhorn Area School Districts. Deny any remaining allegations of paragraph 61.

62. Admit that defendants Greendale School District and Elkhorn Area School District are public entities and recipients of federal funding. Deny that defendants Greendale School District and Elkhorn Area School District are violating the ADA and section 504 of the rehabilitation act by excluding individuals with a disability, on the basis of the disability, from participation in and/or denying them the benefits of services, programs or activities of the Greendale School District and the Elkhorn Area School District, and subjecting them to discrimination. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

63. Deny.

64. State that paragraph 64 recites legal conclusions and arguments that require no answer.

65. State that paragraph 65 recites legal conclusions and arguments that require no answer.

66. Deny that the open enrollment law allows school districts to have quotas for children with disabilities. Deny the remaining allegations of paragraph 66.

67. Deny that plaintiffs are entitled to any relief. State that the remaining allegations recite legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

PRAYER FOR RELIEF

- A. Deny that plaintiffs are entitled to declaratory relief.
- B. Deny that plaintiffs are entitled to injunctive relief.
- C. Deny that plaintiffs are entitled to damages.
- D. Deny that plaintiffs are entitled to costs and attorneys fees.
- E. Deny that plaintiffs are entitled to any other relief.

AFFIRMATIVE DEFENSES

1. As and for a first affirmative defense, defendants affirmatively allege that at all times pertinent to the Complaint defendants Greendale School District and the Elkhorn Area School District acted in good faith and pursuant to and in accordance with the provisions of the State open enrollment law.

2. As and for a second affirmative defense, defendants Greendale School District and the Elkhorn Area School District affirmatively allege on information and belief that plaintiffs have failed to reasonably mitigate their damages.

3. As and for a third affirmative defense, defendants Greendale School District and the Elkhorn Area School District allege that plaintiffs have failed to state a claim upon which relief can be granted.

4. As and for a fourth affirmative defense, the plaintiffs have not exhausted their administrative remedies.

Dated this 29th day of January 2015.

BOARDMAN & CLARK LLP

/s/ David E. Rohrer

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Notice of Electronic Filing and Service

I hereby certify that on January 29, 2015, this document was filed electronically in accordance with the ECF procedures of the United States District Court, Western District of Wisconsin, under Rule 5(d)(1), Federal Rules of Civil Procedure. All parties who are represented and have consented to service of electronically filed documents are served upon receipt of the NEF from the electronic filing system.

To the best of my knowledge, there are no parties in this case that require service by means other than electronic service using the Court's NEF. The original document on file with the filing party contains valid original signatures.