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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASHINGTON PROTECTION AND
ADVOCACY SYSTEM, INC.,
a Washington non-profit corporation,

Plaintiff,

v

EVERGREEN SCHOOL DISTRICT and
RICHARD MELCHING, in his official capacity
as the Superintendent of the Evergreen School
District,

Defendants

CV03-5062 FDB
NO

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

I. PRELIMINARY STATEMENT

This action seeks injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 to prevent the Evergreen School District and Richard Melching, Superintendent of the Evergreen School District (hereinafter "the District"), from unlawfully restricting or interfering with full, complete, and meaningful access of the Washington Protection and Advocacy System, Inc (hereinafter "WPAS"), to children with disabilities who attend public school in the Evergreen School District (hereinafter "District"). WPAS seeks directory information for children with disabilities who attend public school in the District for whom WPAS has probable cause to

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believe have been or may be discriminated against, abused and/or neglected due to their disabilities

II. JURISDICTION AND VENUE

2 1 This action arises under the Constitution and laws of the United States. It seeks declaratory and injunctive relief pursuant to the Civil Rights Act, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights secured to WPAS by the Constitution of the United States and federal law.

2 2 Jurisdiction in this matter is asserted pursuant to 28 U.S.C. §§ 1331, 1343 and 1367 for causes of action arising under the Civil Rights Act, 42 U.S.C. § 1983, as well as under federal constitutional, statutory and common law of the United States.

2 3 The rights which WPAS seeks to redress are guaranteed by the mandates set forth in the Developmental Disabilities Assistance and Bill of Rights Act (hereinafter "DD Act"), 42 U.S.C. § 15041, *et seq.*, *as amended*, and the regulations promulgated thereto; the Protection and Advocacy for Individuals with Mental Illness Act (hereinafter "PAIMI"), 42 U.S.C. § 10801, *et seq.*, *as amended*, and the regulations promulgated thereto, the Protection and Advocacy of Individual Rights (hereinafter "PAIR") Act, 29 U.S.C. § 794e, *et seq.*, and the regulations promulgated thereto, the Protection for Advocacy for Individuals with Traumatic Brain Injuries Act (hereinafter "PATBI"), 42 U.S.C. § 300d-52, and the regulations promulgated thereto, to protect and advocate for individuals with mental or developmental disabilities, and/or traumatic brain injuries for whom WPAS has probable cause to believe have been or may be discriminated against, abused and/or neglected, and by the First Amendment to the United States Constitution, and state law pursuant to RCW 71A.10.080 *et seq.*

2 4 The court has pendent jurisdiction over the plaintiff's state law claim under RCW 71A.010.080 as it derives from the same nucleus of operative facts as the plaintiff's federal claims.

2 5 This Court also has authority pursuant to 28 U.S.C. §§ 2201 and 2202 to enter declaratory judgments declaring the rights and other legal relations of parties to the action, as

1 well as 42 U.S.C. § 1983, and authority pursuant to 42 U.S.C. §§ 1983 and 1988 to award
 2 plaintiff reasonable attorneys' fees and costs expended herein

3 2.6 An award of monetary damages is inadequate as WPAS has suffered and will
 4 continue to suffer irreparable harm from defendants' actions, inactions, policies, procedures
 5 and the violations complained herein

6 2.7 Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) as all parties reside
 7 in the State of Washington and each of the plaintiff's claims for relief arises within this state
 8 All defendants performed the acts and/or omissions complained of herein in the State of
 9 Washington in the Western District of Washington. The Western District in Tacoma provides
 10 the most convenient forum for the litigation of these issues

11 III. PARTIES

12 PLAINTIFF

13 3.1 Plaintiff WPAS, a nonprofit corporation duly organized and existing under the
 14 laws of the state of Washington, is the statewide protection and advocacy system designated by
 15 the Governor of the State of Washington to protect and advocate for the legal and civil rights of
 16 those citizens of this state who have disabilities, pursuant to the DD Act, 42 U.S.C. § 15041, *et*
 17 *seq*, the PAIMI Act 42 U.S.C. § 10801, *et seq*, *as amended*, the PAIR Act, 29 U.S.C. § 794e,
 18 *et seq*, the PAAT Act, 29 U.S.C. § 2201, the PATBI Act, 42 U.S.C. § 300d-52, and RCW
 19 71A.10.080. WPAS maintains its offices at 180 West Dayton, Suite 102, in Edmonds,
 20 Washington

21 3.2 As the duly designated statewide protection and advocacy agency for individuals
 22 with disabilities in the State of Washington, WPAS has the authority and responsibility to
 23 pursue legal, administrative, and such other appropriate remedies or relief as may be necessary
 24 to protect and advocate for the rights of those persons within the State of Washington who are,
 25 or who may be eligible for treatment, services, or habilitation due to their physical and/or

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1 mental disabilities. DD Act, 42 U.S.C § 15041, *et seq.*; the PAIMI Act 42 U S C § 10801,
 2 *et seq* , *as amended*; the PAIR Act, 29 U S C § 794e, *et seq* , and the PAAT Act, 29 U S C §
 3 2201, and the PATBI Act, 42 U S C. § 300d-52, and RCW 71A 10 080

4 3 3 In its capacity as the designated protection and advocacy system for the State of
 5 Washington, WPAS is entitled to access to all present and future persons with disabilities,
 6 individually or as a group, who attend school in the District, and their directory information,
 7 including, but not limited to the names of such children's legal guardian's, their phone numbers
 8 and addresses, among other federally mandated access rights, in order to adequately and
 9 meaningfully protect their rights pursuant to federal and state statutes in regard thereto

10 3 4 WPAS has and will continue to suffer irreparable harm as a result of defendants'
 11 actions or inactions absent preliminary and permanent injunctive and declaratory relief

12 DEFENDANTS

13 1) The Evergreen School District

14 3 5 The Evergreen School District is located in Clark County, Washington and is
 15 fully accredited as a public provider of educational services, including special education, by the
 16 State Board of Education pursuant to RCW 28A 305 130 and WAC 180-55-010 *et seq* It is
 17 located in the Western District of Washington near Vancouver, Washington Its mailing
 18 address is: 13501 NE 28th Street, P.O Box 8910, Vancouver, WA 98668-8910

19 3 6 At all times relevant to this cause, the defendants, knew or should have known
 20 of the policies, practices, acts and conditions alleged herein

21 3.7 At all times relevant hereto, all of the defendants have been operating under
 22 color of law, custom, and usage of the State of Washington.

23 2) Richard Melching

24 3 8 Defendant Richard Melching is sued in his official capacity as the
 25 Superintendent of the Evergreen School District

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3 9 Defendant Melching's administrative office is located in Vancouver,
 2 Washington, and his mailing address is as follows 13501 NE 28th Street, P O Box 8910,
 3 Vancouver, WA 98668-8910.

4 3.10 Defendant Melching, in his official capacity, is charged with and has, at all
 5 times relevant herein, exercised general responsibility, supervision, and oversight for
 6 formulating the policies and practices of the District, and more specifically, the promulgation,
 7 administration, implementation, supervision, and control of the rules, regulations, policies, and
 8 laws relating to the provision and coordination of all of the programs, and services offered to
 9 those children with disabilities by and/or through the District

10 IV. FACTUAL ALLEGATIONS

11 4 1 Plaintiff hereby realleges and incorporates herein, paragraphs 1 1-3 11

12 4 2 At all times relevant herein, WPAS has been, and is, designated by the Governor
 13 of the State of Washington as the protection and advocacy system agency for those citizens of
 14 this state who have mental, developmental, and physical disabilities

15 4 3 WPAS, like all of the protection and advocacy agencies currently operating in
 16 the other forty-nine states, the federal protectorates (American Samoa, the Commonwealth of
 17 the North Mariana Islands, Guam, Puerto Rico, the Republic of Palau, and the United States
 18 Virgin Islands), and the District of Columbia, was originally created pursuant to the mandates
 19 of the DD Act, 42 U.S.C § 10541, *et seq* , to protect and advocate for individuals with
 20 developmental disabilities from abuse and neglect and to advocate for their rights

21 4 4 WPAS' mandate as the protection and advocacy system for the State of
 22 Washington was extended in 1986 to individuals labeled as having mental illnesses in facilities
 23 pursuant to the PAIMI Act, 42 U S C § 10801, *et seq.*, *as amended*, and in 1994 to those
 24 individuals with disabilities who were not already eligible for protection and advocacy services
 25 under the DD or PAIMI Acts under the PAIR Act, 29 U S C § 794(e), *et seq* , and the PAAT
 26 Act, 29 U S C § 2201 In 2002, this authority was expanded by the passage of the PATBI Act,
 27 42 U S C § 300d-52 to persons with traumatic brain injuries.

4 5 As a result of the extensive Congressional hearings preceding each of the
 2 aforesaid statutory enactments, Congress found that there had been an extensive history of
 3 unlawful discriminatory segregation, extraordinary maltreatment, financial exploitation,
 4 neglect, and physical abuse of individuals with disabilities

5 4 6 The DD, PAIMI, PATBI, PAIR, and PAAT Acts require that each state, in
 6 exchange for receipt of certain federal financial assistance, “ effect a system to protect and
 7 advocate for the rights of persons ” with disabilities and further specify that these systems,
 8 must have the authority to investigate and pursue legal and other appropriate remedies for those
 9 individuals DD Act, 42 U.S.C § 10540, *et seq* , *as amended*; PAIMI, 42 U.S C § 10805 *et*
 10 *seq* , *as amended*, and PAIR, 29 U.S.C. § 794(f)(3), and PAAT, 29 U S C § 2201, PATBI, 42
 11 U S C §300d-52

12 4.7 The Washington state legislature also provided for this system with the
 13 enactment of RCW 71A 10.080 Under RCW 71A 10 080(1), the designated protection and
 14 advocacy system for the state of Washington “shall have the authority to pursue legal,
 15 administrative, and other appropriate remedies to protect the rights of the developmentally
 16 disabled and to investigate allegations of abuse and neglect.” Similar authority is granted to the
 17 designated protection and advocacy system to “pursue legal, administrative, and other
 18 appropriate remedies to protect the rights of the mentally ill persons and to investigate
 19 allegations of abuse or neglect ” under RCW 71A 10 080(2).

20 4 8 WPAS, in accordance with its federal mandates, duties, and responsibilities as
 21 the designated protection and advocacy system for the state of Washington under federal and
 22 state law, has employed attorneys and advocates to perform and provide protection and
 23 advocacy services to those citizens of the State of Washington who have mental,
 24 developmental, physical and other disabilities

25 4 9 WPAS currently provides protection and advocacy services to a child with
 26 developmental disabilities who attends school at the Heritage High School in the Evergreen
 27 School District

1 4 10 In late 2002, WPAS received a complaint from a parent that children with
2 disabilities in the District are required to collect garbage, recyclable trash and perform other
3 janitorial tasks as part of their educational plans *See* Declaration of John Finders, attached
4 hereto as Exhibit 2 Such tasks were alleged to occur as part of the children with disabilities'
5 "Work Experience" and "Life Skills" courses at Heritage High School *Id*

6 4 11 WPAS began its investigation of the complaint and sent a probable cause letter
7 to the Heritage High School's Special Services Department on December 6, 2002, requesting
8 that Heritage produce directory information for other children with disabilities in the special
9 education program who also are collecting garbage and/or collecting lunch tables and chairs as
10 part of their "Work Experience" program, and/or collecting recycling for the school, or
11 performing other janitorial tasks at the school *See* Letter of 12/6/02, attached hereto as
12 Exhibit 3A

13 4 12 On information and belief the District has custody, possession and/or control of
14 the information requested by WPAS in its letter of December 6, 2002 to the District

15 4 13 In the same letter of December 6, WPAS also requested general information
16 regarding the "Work Experience" program, including all policies, goals, criteria and
17 descriptions of the program and it's requirements *Id*

18 4 14 The District, through its counsel, Lawrence Ransom, verbally contacted WPAS
19 on December 11, 2002, and stated that the District would not produce the records requested in
20 WPAS' December 6, 2002 letter, claiming that WPAS lacked the authority to obtain such
21 information without the consent of the affected student's parents or guardians *See* Decl of
22 Herivel ¶5, 11, attached hereto as Ex 3, Decl. of David Girard, ¶3-6, hereto attached as Ex 4

23 4 15 On December 11, 2002 after speaking with Mr Ransom, WPAS faxed Mr
24 Ransom materials further detailing its authority to obtain the requested materials, which
25 included a case that directly addressed the District's concerns regarding release of the requested
26 information Decl. of Herivel ¶ 6

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1 4 16 On December 19, 2002, WPAS again requested that the District provide the
2 requested information. The District, through its counsel, again refused to provide the
3 information. Decl of Girard at ¶ 5

4 4 17 On December 19, 2002, WPAS also verbally requested that the District provide,
5 at a minimum, the policy and program materials requested in its December 6, 2002 letter. *See*
6 Decl of Girard ¶ 7, Ex 4. The District did not respond to this request until over one month
7 later. Decl of Herivel ¶ 11, Ex 3. On January 27th, 2003, the District sent only handful of
8 general brochures regarding Heritage High School's "Work Experience" program, but
9 continued to refuse to disclose the remainder of the requested information. *Id*

10 4 18 In response to the District's verbally stated refusal on December 11th and
11 December 19th, 2002 to produce the requested information based upon its belief that WPAS
12 lacked the federal statutory authority to obtain the requested materials, WPAS submitted a
13 written overview to the District on January 15, 2003 detailing WPAS' federal statutory and
14 regulatory authority. *See* Decl of Herivel, Letter from Herivel to Ransom, dated January 15,
15 2003, hereto attached as Ex. 3C. In that letter, WPAS reiterated that federal statutes require
16 production of requested documents by the District within 3 days, and gave the District one
17 additional week to produce the requested records. *Id*

18 4 19 In addition, WPAS informed the District in the January 15, 2003 letter that it
19 was also required to produce the names and addresses of the guardians of all children addressed
20 in WPAS' original records request dated December 6, 2002, as required by 45 CFR §1386.22
21 (h)(I), which provides that "[i]f a system is denied access to facilities and its programs,
22 individuals with developmental disabilities, or records covered by the Act it shall be provided
23 promptly with a written statement of reasons, including, in the case of a denial for alleged lack
24 of authorization, the name and address of the legal guardian, conservator, or other legal
25 representative of an individual with developmental disabilities", *see* Decl of Herivel, Letter
26 from Herivel to Ransom, dated January 15, 2003, Ex 3C

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1 4 20 The District again verbally refused to produce the directory information in a
2 phone conversation from Mr Ransom to WPAS on January 22, 2003 *See* Decl of Herivel
3 ¶ 11, Ex 3 To date, the District has also refused to provide its reasoning for denying the
4 request in writing to WPAS as required by 42 U S C §15043(a)(J)(I) *Id* at ¶14, Decl of
5 Girard ¶ 8, Ex. 4

6 4 21 The District has continued, to date, to refuse to disclose the requested
7 information, to provide WPAS with its reasoning for denying the requested information in
8 writing, or to provide WPAS the names, addresses of the affected students' parents, guardians
9 or representatives as required by federal law Consequently, WPAS is unable to fulfill its
10 federal mandate to investigate the complaints of abuse, neglect and/or discrimination due to
11 disability against children with disabilities who attend school in the District

12 4 22 Defendants have been made well aware of, and been informed by WPAS of
13 WPAS' federal access authority to the requested information

14 4.23 Defendant Melching has acted in his official capacities to create and maintain
15 practices, policies and procedures that hamper the Congressionally mandated functions and
16 duties of WPAS

17 4 24 The exhaustion of administrative remedies, if any are available, is not required
18 in that WPAS seeks declaratory and injunctive relief. As described in the foregoing
19 paragraphs, WPAS has attempted to resolve its access issues informally with the District This
20 attempt has proven unsuccessful

21 4 25 WPAS and its potential clients have suffered and continue to suffer immediate,
22 direct and irreparable injury to their statutory and Constitutional interests in investigating
23 WPAS' probable cause belief that children with disabilities who attend school in the District
24 suffer abuse, neglect and/or discrimination due to their disabilities because of the District's
25 continued delay and refusal to provide WPAS with full, effective, and meaningful access to
26 such children and to the directory information of children with disabilities in the District, to

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1 which WPAS is entitled under the DD, PAIMI, PAIR, and PATBI Acts, and the regulations
2 promulgated thereto.

3 4 26 WPAS has standing to bring this action on its own behalf because the refusal or
4 denial of access to directory information by the District constitutes an injury in fact to WPAS'
5 legally protected interests. This injury is concrete, particularized, actual, and imminent. There
6 is a causal relationship between the injury and defendants' challenged conduct, and a favorable
7 decision by this Court will redress the injury.

8 4 27 WPAS has no adequate remedy at law.

9 **V. LEGAL CLAIMS**

10 **1) Count I: Violation of WPAS' Rights Under 42 U.S.C. §§ 10541, et seq. as**
11 ***amended, and 10801 et seq. as amended, 29 U.S.C. § 794e, 300d-52 and the Underlying***
12 **Regulations**

13 5 1 WPAS hereby realleges and incorporates herein paragraphs 1.1 - 4 30

14 5 2 The actions of the District, as described in this Complaint have violated, and
15 continue to violate, the rights of WPAS under the PAIMI, DD, PAIR and PATBI Acts, the
16 regulations promulgated thereto, and 42 U.S.C. § 1983, under color of law.

17 5 3 WPAS has no fair, adequate, or speedy remedy at law and has and will continue
18 to suffer irreparable harm absent the issuance of an order from this Court granting preliminary
19 and permanent relief.

20 **2) Count II: Violation of Civil Rights**

21 5 4 WPAS hereby realleges and incorporates herein paragraphs 1.1 - 5 3

22 5 5 The District's violation of WPAS' rights, as alleged herein, also constitutes a
23 cause of action under 42 U.S.C. § 1983 for violations, under color of state law of WPAS'
24 federal constitutional rights including the rights of freedom of association and speech as
25 guaranteed by the First Amendment to the United States Constitution.

26 5 6 Defendants have violated the rights of WPAS to freedom of speech, expression,
27 and association as secured by the First Amendment to the Constitution of the United States and

42 U S C § 1983 by preventing WPAS from freely speaking to and associating with children with disabilities for whom WPAS has probable cause to believe have been or may be discriminated against, abused and/or neglected by the District

3) Count III: Violation of State Law

5 7 Defendants have violated WPAS' rights as guaranteed by RCW 716 A 10 080 to be an effective protection and advocacy system and to pursue legal, administrative and other appropriate remedies to protect the rights of the mentally ill and developmentally disabled and to investigate allegations of abuse and neglect

Prayer for Relief

WHEREFORE, plaintiff Washington Protection and Advocacy System, Inc , requests the following relief from Court

A For an Order assuming jurisdiction over this case including the plaintiff's state law claims,

B For an Order declaring that defendants' actions and inactions, as described herein, violate plaintiff's rights under the First Amendment to the Constitution of the United States and under the DD Act, 42 U.S.C § 15041, *et seq* , *as amended*, the PAIMI Act, 42 U S C § 10801, *et seq* , *as amended*, the PAIR Act, 29 U S C § 794e, the PATBI Act, 42 U.S C § 300d-52, and the regulations promulgated thereto and RCW 71A 010 080,

C For an Order directing defendants to immediately provide plaintiff WPAS with full, meaningful and effective access to directory information for children who attend public school in the Evergreen School District without further delay,

D For an Order awarding plaintiff its costs and an appropriate award for their attorneys' fees pursuant to 42 U S C § 1988, and

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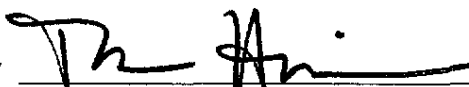
1 E For an Order granting plaintiff such other and further relief as this Court deems
2 just and proper

3 DATED this 5th day of February, 2003.


4 Respectfully submitted,

5 Washington Protection and Advocacy System,
6 Inc , Plaintiff

7
8 By


Tara Herivel, WSBA #31803

9
10
11 By.


David B Girard, WSBA# 17658
Attorneys for Plaintiff WPAS