

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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Disability Rights Wisconsin, Inc.

Plaintiff,

SOFRON B. KEDILSKY  
CLERK

v.

Case No. **06-C-0813**

Walworth County Board of Supervisors,

Defendant.

COMPLAINT

**Parties**

1. Disability Rights Wisconsin, Inc. (DRW) is a non-profit organization required, under Wis. Stat. Section 51.62, to advocate for the rights of individuals with disabilities in the State of Wisconsin. DRW brings this action on behalf of all school age children with disabilities who reside in Walworth County, whose special education curriculum is designed and funded, in part, by the Walworth County Children with Disabilities Education Board (WCCDEB).

2. The Walworth County Board of Supervisors (Board) is the public entity responsible for creating the Walworth County Children with Disabilities Education Board (WCCDEB).

**Venue and Jurisdiction**

3. Venue is properly in the Eastern District of Wisconsin, pursuant to 28 U.S.C. § 1391.

4. Jurisdiction is properly in the Eastern District of Wisconsin, pursuant to 28 U.S.C. § 1331, as this action arises under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, Title II, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

### **Facts**

5. The Walworth County Children with Disabilities Education Board (WCCDEB) is a publicly-financed educational program, including federal funds, established under Wisconsin Statutes Section 115.817, and created by the Board to fulfill the responsibility of school districts in Walworth County to educate children with disabilities. Among the approaches it uses to educate children with disabilities is the operation of the Lakeland School, a restrictive, segregated educational environment that exclusively educates disabled students.

6. The Lakeland School, located in Walworth County, was opened in 1950 with 14 students. It currently enrolls approximately 260 students with disabilities. More than 2300 students in 15 school districts throughout Walworth County receive special education services. These school districts are located within the municipalities of East Troy, Elkhorn, Delavan-Darien, Burlington, Lake Geneva, Big Foot, Fontana, Linn, Sharon, Walworth, Geneva, Genoa City, and Whitewater.

7. The WCCDEB has been empowered through the school districts of Walworth County, under Wis. Stat. Section 115.817, to administer special education services to its students. By this authority, the WCCDEB has created and maintained the Lakeland School, which is used to educate students with disabilities who reside in Walworth County.

8. Due in large part to the operation of the Lakeland School, Walworth County educates over 11% of its children with disabilities exclusively with other children with disabilities, a significantly higher percentage than any other county in Wisconsin.

9. As a result of the WCCDEB's funding from the State of Wisconsin and the contract agreements with each of the school districts in Walworth County, virtually all special education employees in Walworth County are employed by the WCCDEB. Consequently, there is a financial disincentive for local school districts to independently provide appropriately staffed school environments for children with disabilities in Walworth County.

10. The WCCDEB, in its correspondence to local Walworth County school districts, has stated that only a minority of Lakeland students have "significant needs." By implication, then, a large majority of Lakeland students do not have significant needs and could be educated in a more integrated environment. The statistics below represent the percentage of children with disabilities who are educated exclusively with other children with disabilities in each of Walworth County's 15 school districts.

<b>Walworth County School District</b>	<b>Percentage of Students With Disabilities Educated at a Public Separate School, Age 6-21<sup>1</sup></b>	<b>Percentage of Students With Disabilities Educated at a Public Separate School, Age 3-5<sup>2</sup></b>
East Troy	8.76	30
Elkhorn	16.73	44.44
Delavan-Darien	13.27	48.15
Burlington	2.23	1.85
Lake Geneva	7.51	33.33
Big Foot	15.19	N/A <sup>3</sup>
Lake Geneva-Genoa City	14.29	N/A
Fontana	18.52	11.11
Linn J4	12.5	0
Linn J6	21.43	0
Sharon	23.64	30.77
Walworth J1	6.9	14.29
Geneva J4	11.11	0
Genoa City	12.16	13.33
Whitewater	6.78	9.52

<sup>1</sup> Percentages are from the 2003-04 school year, which is the most recent data available from the Wisconsin Department of Public Instruction. *Available at* <http://www2.dpi.state.wi.us/leareports/>.

<sup>2</sup> *Id.*

<sup>3</sup> The Big Foot UHS and the Lake Geneva-Genoa City School Districts are union high school districts that do not have any publicly-educated children between the ages of three and five who are disabled. The Geneva J4, Linn J4, and Linn J6 School Districts each served only two publicly-educated children between the ages of three and five who are disabled in any type of group environment.

11. These figures represent a serious deviation in the restrictiveness of the special education environment provided to children with disabilities in Walworth County relative to that which is generally provided throughout the state of Wisconsin. In contrast, the statewide percentage of children with disabilities educated in a public separate school in Wisconsin during the 2004-05 school year was 0.8 % for students aged 6-21 and 0.68% for students aged 3-5. A major factor in this discrepancy is Walworth's Lakeland School, one of the largest "public separate schools" in the state.

12. Additionally, at its April 20, 2006 meeting, the Walworth County Board of Supervisors voted to approve Resolutions 84-02/06 and 83-02/06. Together, these resolutions approved bonding in the amount of \$22 million and endorsed using those funds to construct a new Lakeland School building on a new site. With the construction of a new building, the number of potential students with disabilities who can enroll at Lakeland School will increase significantly.

#### **First Cause of Action-Violations of the ADA**

13. The Plaintiff, Disability Rights Wisconsin, Inc. on behalf of children with disabilities in Walworth County, hereby incorporates, paragraphs 1-12 above, as if fully set forth herein.

14. WCCDEB, acting under the supervision and control of the Board, fails to educate each of its students enrolled at Lakeland in Walworth County in the most integrated environment to the maximum extent appropriate. Additionally, the Lakeland School fails to ensure that each of its students with disabilities participates with students

without disabilities in non-academic and extra-curricular activities to the maximum extent appropriate.

15. WCCDEB's administration of the Lakeland School, Walworth County, Wisconsin, infringes upon the rights of its students with disabilities to receive special education services in the least restrictive environment, in violation of Title II of the ADA, 42 U.S.C. §§ 12131 and 12132.

**Second Cause of Action-Violations of Section 504 of the Rehabilitation Act of 1973**

16. The Plaintiff, Disability Rights Wisconsin, Inc. on behalf of children with disabilities in Walworth County, hereby incorporates, paragraphs 1-15 above, as if fully set forth herein.

17 WCCDEB's administration of the Lakeland School, Walworth County, Wisconsin, discriminates against special education students who reside in Walworth County on the basis of their disabilities. The funding provided the Lakeland School and diverted from other avenues of special education services are the focus of these pleadings, and result in the discrimination alleged in this complaint.

18. WCCDEB's administration of the Lakeland School, Walworth County, Wisconsin, discriminates against children with disabilities on the basis of their disabilities, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.


**Prayer for Relief**

WHEREFORE, Disability Rights Wisconsin, on behalf of all children with disabilities who reside in Walworth County, hereby requests that the Court hold a trial in

this matter to review all the claims set forth herein. Plaintiff further requests that this court:

- (1) enjoin defendant WCCDEB to place their students with disabilities in the most integrated environment to the maximum extent appropriate in order to comply with Title II of the ADA and Section 504 of the Rehabilitation Act of 1973;
- (2) enjoin defendant WCCDEB from proceeding with development projects relating to building a new, larger Lakeland School on a new site;
- (3) order the WCCDEB and the defendant school districts to pay all attorneys' fees and costs incurred by plaintiffs in this matter;
- (4) order any other relief which it deems necessary and just in this matter.

Dated this 28<sup>th</sup> day of July, 2006.



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