

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**JOHN HALVORSEN
KATHY B. HALVORSEN,**

Plaintiffs,

v.

Civil Action No.: 3:24cv00194

**POWHATAN COUNTY PUBLIC SCHOOLS
PCPS**

and

**DR. BETH TEIGEN, Individually and in her
official capacity as SUPERINTENDENT OF
POWHATAN COUNTY PUBLIC SCHOOLS**

and

DR. LISA COONS, Individually,

Defendants.

COMPLAINT

COME NOW, the Plaintiffs, John Halvorsen and Kathy B. Halvorsen, by and through their counsel, and set forth the following facts which were engaged in by the Defendants named herein who, at all times relevant herein, acted under the color of law.

PARTIES

1) John Halvorsen and Kathy B. Halvorsen, husband, and wife, are the parents of AH, a minor, who was at all times relevant herein, attending Powhatan County Public Schools ("PCPS") and who is a student with a disability, having been diagnosed with an autism spectrum disorder.

- 2) Defendant Powhatan County Public Schools (hereinafter "PCPS") is the Local Educational Agency (LEA) as defined by the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, §22.1-346C of the Code of Virginia, 1950 as amended.
- 3) Defendant Dr. Beth Teigen is the duly appointed Superintendent of PCPS, appointed by the elected School Board for Powhatan County, Virginia.
- 4) Defendant Dr. Lisa Coons Superintendent of Public Instruction is being sued in her individual capacity.

VENUE AND JURISDICTION

- 5) Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).
- 6) This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343, as this action includes claims brought pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq, and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 1983 and 12101 *et seq.*, ("ADA"), which challenges actions either undertaken by Defendant Teigen and challenges the failure to act on the part of Defendant Coons under color of the laws of the Commonwealth of Virginia that discriminated against AH's disability under Section 504 and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA") and the Fourteenth Amendment to the Constitution of the United States.
- 7) Plaintiff also invokes pendent party jurisdiction pursuant to 28 U.S.C. § 1367, which gives this Court the power to decide not only the federal questions set forth herein but also the state claim of Intentional Infliction of Emotional Distress, which is outlined in Count 3 below.
- 8) Declaratory relief sought in this Complaint is authorized by 28 U.S.C. §§ 2201 and 2202.

FACTS

1. AH

- 9) Before October 8, 2021, AH was a student with perfect attendance.
- 10) On or about Oct 8, 2021, an incident occurred where AH was attending school, during which Tom Sulzer, Pocahontas' head principal, assaulted AH by grabbing and holding him so he could not move.
- 11) Kathy Halvorsen, AH's mother, was in the school's parking lot to pick up AH from school. When she learned that AH was in Mr. Sulzer's grasp and that he was continuing to hold AH, she went into the school and observed that AH was still in the physical grasp of Mr. Sulzer. She instructed him to release his grip on AH, which he did.
- 12) Kathy Halvorsen estimates that AH was in Mr. Sulzer's grip for at least 15 minutes.
- 13) As a direct and proximate result of Sulzer's assault on AH, the child suffered significant emotional trauma such that he refused to return to Pocahontas.
- 14) On or about November 16, 2021, Christopher A. Ayres, MD, AH's physician, prepared a letter regarding school attendance in which he stated:

AH has been a patient at our practice since his birth and carries a diagnosis of autism. I reviewed his chart today and over the past 3-4 years, he had the occasional office visit or phone call from mom to discuss anxiety or negative behaviors, usually revolving around school. These incidents were on average about 1 or 2 per school year. In 2021, I have received multiple phone calls from mom indicating that AH is having negative behaviors frequently at school only. Mom reports that his behaviors are the same at home. Mom and I discussed negative behaviors he was having in February 2021 and we have had multiple interactions over the past six weeks (from 10/1/21 - present day) all revolving around his continued negative behaviors at school, but no changes in home behaviors. As you are aware, typically when a child is having negative behaviors in only one environment, we would recommend accommodations be made in that one environment to assist that child in overcoming their negative behaviors.

- 15) On or about January 14, 2022, Doctor Ayres prepared a letter regarding AH's school attendance in which he stated:

AH is a patient of our practice [Commonwealth Pediatrics] and has been since birth. I have been in intermittent communications with mom over the past few months regarding the school difficulties. He is currently in Homebase awaiting private placement and has not been purposefully missing school. This has been the case from 11/10/21 until the present day. It was advised that he be placed in homebase due to trauma he was experiencing at school secondary to restraining. He has been exhibiting symptoms of anxiety secondary to that trauma.

16) On or about May 25, 2022, Doctor Ayres wrote a second letter recommending that AH be given an alternative educational environment.

17) Although Defendants received Doctor Ayres's letters and recommendations, no attempt was made to contact Doctor Ayres to discuss his diagnosis and suggestion that AH be given an alternative educational environment.

18) On September 15, 2022, Doctor Ayres submitted his third diagnosis and statement of AH's conditions and, in that letter, also stated, "As I understand it, he has been waiting on a **private placement for this 2022-2023 school year and has not been intentionally missing school.**" (Emphasis added).

2. AH's IEP

19) At the beginning of the 2022-2023 school year, and pursuant to AH's IEP, with which PCPS agreed, the child's parents enrolled him in Believe-N-You Academic Center (hereinafter "BNU").

20) The Director of BNU agreed to enroll AH without an initial payment of the tuition and during AH's period of enrollment, sent invoices to PCPS for payment of the tuition.

21) After several BNU invoices were sent to PCPS, the Defendants sent a letter to BNU demanding that BNU stop sending invoices because there was no agreement between PCPS and BNU whereby PCPS agreed to pay AH's tuition.

22) AH was enrolled in a private school that met the child's needs, approved by AH's IEP team, and began classes in September 2022.

23) The Plaintiffs refused to give Children Services Act (hereinafter "CSA") their consent to allow CSA to pay BNU's tuition because there was a requirement that they had to include their personal and financial information to allow CSA to pay for AH's tuition.

24) On June 24, 2022, Defendants sent a letter to CSA requesting that it "promptly execute a contract with BNU for the 2022-2023 school year for the attendance of AH to this private placement. (Exhibit 5).

25) On or about June 27, 2022, Audra Morris, Powhatan's CSA, sent an email to Lynn Clayton-Prince, Assistant Superintendent for Special Education for PCPS, which stated as follows:

Parents are not required to sign this consent; however, in refusing to do so, they are responsible for reaching out to each individual agency for services. The CSA Consent allows the CANS to be completed and information shared between the referring agency and the CSA; therefore, CSA eligibility cannot be determined, and CSA funds are inaccessible. **For these reasons, Powhatan CSA must deny CSA funding, and the school system is responsible for the provision of a Free Appropriate Public Education (FAPE) (8VAC20-81, Section M-3) under the Individuals with Disabilities Education Act (IDEA)**

(Emphasis Added).

26) On September 15, 2022, BNU advised the Plaintiffs that AH could not remain at the BNU school unless the tuition and fees were paid.

27) To date, Defendants have failed and refused to pay AH's tuition to attend BNU.

3. Retaliatory Actions Taken By Powhatan and Dr. Teigen After Parents Refused to Submit and Sign a CSA Application for Funding

28) Plaintiffs refused to submit a signed application for CSA funding of AH's private placement because they were concerned with revealing private, personal information.

29) On August 10, 2022, PCPS caused to be filed in the Juvenile him and Domestic Relations District Court of Powhatan County, Case No. J6361-01, a “Child In Need of Services” summons pursuant to §§16.1-262, 263 of the Code of Virginia, which was served on the parents.

30) The summons falsely claimed as follows:

**CHILD IN NEED OF SUPERVISION IN THAT WHILE
SUBJECT TO COMPULSORY SCHOOL ATTENDANCE IS
HABITUALLY AND WITHOUT JUSTIFICATION ABSENT
FROM SCHOOL, PURSUANT TO §16.1-241(A)(I) OF THE
1950 CODE OF VIRGINIA AS AMENDED.**

31) CHINS Services is defined: “(i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person.” In order to be found a CHINS Services, the Code provides that “(i) the conduct complained of must present a clear and substantial danger to the child’s life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.”

32) CHINS Supervision addresses truancy and runaway behaviors. With regard to truancy, a child who is subject to compulsory school attendance may be found to be in need of supervision if such a child is habitually and without justification absent from school after reasonable efforts have been made by the school without success to affect the child’s regular attendance.

33) Once a summons has been proved, the juvenile court may enter orders regarding disposition for the supervision, care, and rehabilitation of the child. Section 16.1-278.4 sets forth

the dispositional options for CHINS Services cases, and §16.1-278.5 provides the options in CHINS Supervision cases.

34) While CHINS Services and CHINS Supervision cases are “status” and not “delinquency” matters, they, nonetheless, regularly involve monitoring or enforcement by a probation officer. Accordingly, a child or parent’s failure to comply with a court order can result in the filing of a violation or rule to show cause against a child or parent, respectively, and a dispositional option for each can be detention for the child or incarceration for the parent. Moreover, dispositional options may include placement of the child in a residential treatment facility or foster care. AH’s parents retained counsel to represent them in this false and fraudulent claim. A motion to dismiss the summons was filed, and the matter was an incorrect and false claim that AH was a child in need of services.

35) On June 24, 2022, Defendants sent a letter to CSA requesting that it “promptly execute a contract with BNU for the 2022-2023 school year for the attendance of AH at this private placement.

36) On or about June 27, 2022, Audra Morris, Powhatan’s CSA, sent an email to Lynn Clayton-Prince, Assistant Superintendent for Special Education for PCPS, which stated as follows:

37) Parents were not required to sign this consent; however, in refusing to do so, they are responsible for contacting each agency for services. The CSA Consent allows the Child and Adolescent Needs and Strengths Assessments (hereinafter “CANS”) to be completed and information shared between the referring agency and the CSA; therefore, CSA eligibility cannot be determined, and CSA funds are inaccessible. For these reasons, Powhatan CSA must deny CSA funding, **and the school system is responsible for the provision of a Free Appropriate Public**

Education (FAPE) (8VAC20-81, Section M-3) under the Individuals with Disabilities Education Act (IDEA). (Emphasis added).

38) On September 15, 2022, BNU advised the Petitioners that AH could not remain at the BNU unless the tuition and fees were paid.

39) AH's parents had to remove him from the private school because of the failure and refusal of PCPS to pay the costs of the private school to educate AH, which PCPS is now using as part of its effort to force the parents to consent to CSA.

40) PCPS's attempt to place blame on AH's parents for failing and refusing to give CSA consent to fund the private placement for AH and claim that AH is "A Child in Need of Services" to justify the summons and petition is a flagrant abuse of process and is without factual or legal justification.

41) The CHINS Petition was summarily dismissed by the Juvenile and Domestic Relations District Court of Powhatan County's judge presiding over the case. The judge ruled in dismissing the case that the issue was not a child needing services, but who would pay for AH's private placement.

42) Although Powhatan County had the right to appeal the dismissal of the case, no appeal was filed, which indicates the frivolousness of the CHINS Petition.

43) The parents then filed a Petition for Mandamus in the Circuit Court of Powhatan County which was initially dismissed after a request for reconsideration was submitted, but based upon the admission of PCPS that the parents were within their rights to my consent to CSA funding and that the responsibility for the team AH's tuition was squarely on the shoulders of PCPS. Despite

the proof of the submission, the judge presiding over the mandamus refused to reconsider its dismissal order.¹

44) As a result, AH is still not in school, and PCPS persists in not paying AH's tuition to BNU.

45) As a direct and proximate cause of the retaliatory actions set forth above, the parents were forced to expend significant fees to defend against these retaliatory actions.

4. Doctor Federici's Current IEE

46) In his report, Doctor Federici made the following DIAGNOSTIC IMPRESSIONS:

47) Autistic Spectrum Disorder, Without Accompanying Intellectual or Language Impairment and Associated with a Probable Genetic Condition (DSM-V 299.00/ICD-10 F84.0).

48) Language Disorder (Weaknesses in Auditory Processing and Expressive Semantic-Pragmatic-Syntactical Expression) (DSM-V 315.39/ICD-10 F80.9).

49) Specific Learning Disorder with Impairment in Written Expression (Spontaneous Writing) (DSM-V 315.2/ICD-10 F81.81).

50) Post-Traumatic Stress Disorder (Related to Ongoing Chaos and Confusion in his School/Classroom Setting) (DSM-V 309.81/ICD-10 F43.10).

51) Generalized Anxiety Disorder (DSM-V 300.0).

52) Developmental Coordination Disorder (Weaknesses in Visual-Motor Integration and Nonverbal Learning Disorder) (DSM-V 315.4/ICD-10 F82.0).

53) Doctor Federici also made the following treatment recommendations:

¹ This ruling is currently on appeal to the Court Of Appeals of Virginia where briefs have been filed but no action has been taken on the appeal.

- a) A copy of AH's report is being mailed to the family to share with appropriate school officials.
- b) AH has been approved for a school program, and it would be in his best interest to be considered for a program where he has already had success, named the "Believe-N-You Academic Center".
- c) It would be counterproductive for AH and cause further Autistic regression if AH is placed in any type of "mixed program" for children who have Autism and related disorders or if there are any children who have other disorders such as intellectual disabilities, severe emotional disabilities, or other types of psychiatric disorders as this will be a direct contradiction to working with AH in classic Autistic interventions.
- d) It is very important that AH have a full-time Autism school in which he can be afforded Applied Behavioral Analysis (hereinafter "ABA"), Verbal Behavior Therapy, and Relationship Development Intervention (hereinafter "RDI"), as well as educational interventions, as AH has adequate "educational skills" in which he can certainly move forward.
- e) AH may require a one-on-one aide at the start of any new program in order for him to settle down.
- f) There is no question that AH's behaviors that the schools reported are a classic example of what is known as "Autistic regression." This translates to children who definitely have Autism and high-risk patterns for high anxiety and behavioral control, as well as overstimulation, to increase these patterns unless there are the appropriate Autistic interventions, which involve a board-certified behavioral analyst who has formal training

and experience working with Autism without the use of restraints or seclusion and isolation, which is contraindicated.

g) AH's autistic regression clearly showed up on his neuropsychological evaluation, as well as his observation, as he would have an emotional dysregulation episode when he was challenged with anything new or ambiguous, or if he perceived that there was any type of potential problem or confusion.

h) Additionally, AH has vivid recollections of his states of fear and anxiety when he was physically restrained and put in seclusion, which, again, is contraindicated for children with Autism and related disorders.

i) The standard of care would be Handle with Care training or crisis prevention intervention, as one would complete a formal training program with certification in the appropriate use of physical restraints, if necessary.

j) It is imperative that AH be placed in a full-time program immediately, as he is well beyond the public-school service programs.

5. Dr. Samantha Marsh Hollins

54) On or about June 23, 2023, the Assistant Superintendent Department of Special Education, Dr. Samantha Marsh Hollins, sent the following letter to the defendants the Virginia Department of Education (VDOE) sent a letter by email to Defendant Teigen regarding the dispute between the Plaintiffs and the Defendants which stated:

The Virginia Department of Education has recently been advised of delays in resolving the dispute between Powhatan County Public Schools (PCPS) and the provision of a free appropriate public education (FAPE) for [AH]

On June 27, 2022, the Office of Dispute Resolution and Administrative Services (ODRAS) received the Implementation Plan for the May 13, 2022, Hearing Officer decision in

reference to Case 22-094. The Hearing Officer's decision was in favor of the Local Educational Agency (LEA) and ordered placement in a private day school. The Implementation Plan indicated that there was a parentally signed individualized education program (IEP) provided to PCPS on May 13, 2022.

While VDOE, as did the Hearing Officer in the subsequent due process case decision of September 11, 2022, recognizes the process has been delayed by the return of a consented IEP or providing additional consents to investigate additional potential placements, the school division's responsibilities in this case, are clear and unambiguous, and further delay in implementation is unacceptable.

Documentation that placement at a private day school and a contract between the LEA and the private day school has been agreed upon should be provided to Sandra Ramsey, Compliance and Corrective Action Plan Specialist, at Sandra.Ramsey@doe.virginia.gov.

In the event that PCPS fails to come into compliance with the implementation plan within fourteen days of this letter, VDOE will forward the matter to the Superintendent of Public Instruction for further action.

(Emphasis Added).

6. Dr. Lisa Coons Failure to Act

55) On August 28, 2023, Dr. Lisa Coons, Superintendent of Public Instruction, sent a letter to the defendants expressing great concern because of the continuing delay “regarding the enrollment of [AH] into a private placement that was recommended by Powhatan County Public Schools (PCPS), consented to by the parents, and in accordance with the June 27, 2022 “Implementation Plan.”

56) This letter set forth the following:

While PCPS has responded that lack of parent consent has hindered its ability to utilize funds available through CSA to support costs of private day placement, there is no requirement in the Code of Virginia that restricts the payment source for public placements in private day schools to these funds. In fact, such a requirement

would be contrary to federal law, as the Individuals with Disabilities Education Act (IDEA) simply does not allow the provision of FAPE to be conditioned on a funding source.

This letter provides notice that PCPS may no longer delay completion of the placement, as (i) the student's placement in a private day school was not at issue (ii) the school division has, in essence, conceded that the private day school for which the parent has returned a signed release for application would meet the student's needs; and (iii) the parent has consented to an IEP for the placement. Should this matter not be resolved and PCPS continue to delay actions to comply, the VDOE will seek remedies available under CFR 200.339 and 200.208, which may include restrictions on or withholding of federal funding.

Documentation that placement at a private day school and a contract between the LEA and the private day school has been agreed upon should be provided to the previous VDOE staff contact shared no later than 30 days from the date of this letter.

(Emphasis Added).

57) Doctor Coons had a duty to follow through on her statement that the VDOE would seek remedies available under CFR 200.339 and 200.208, including restrictions on or withholding of federal funding.

58) Despite these clear statements of responsibility by the defendants to provide funding for the private placement of AH at BNU, with specific timeframes regarding compliance, the defendants have as of the date of the filing of this complaint, Defendants PCPS and Teigen have failed and refused to provide tuition for AH at BNU.

59) On or about October 25, 2023, Doctor Ayres made the following observations with regard to AH:

a) AH is a patient of our practice and carries a diagnosis of autism (F84). This condition is a spectrum which can cause differing symptoms in every child. In Alex's case,

he has elevated levels of anxiety/negative behaviors only in certain school environments (previous public-school placement).

b) He has not experienced those symptoms in his new school setting at home or in other public situations. We recommend Alex remain in his current school situation to allow him to receive the appropriate education and not be stressed while trying to learn. As you know, a child will function and learn much better when there are little to no external stressors on that child. Mr. and Mrs. Halvorsen are in frequent communication with our office for AH and he comes into our office yearly for his well child check.

7. Evidence of Discrimination Against AH

60) Powhatan children without disabilities have in the past and currently attend the following private schools, and the Defendants pay their tuition and transportation:

- a) Maggie Walker Governors School, Richmond, Virginia
- b) Appomattox Governors School, Petersburg, Virginia
- c) Code RVA Regional High School, Richmond, Virginia.²

8. Negative Impacts on Plaintiff Kathy B. Halvorsen

61) Katy B. Halvorsen, AH's mother, has suffered and continues to suffer the following negative impacts as a direct and proximate result of the foregoing:

- a) PTSD from anxiety
- b) Sleep Deprivation
- c) High Blood Pressure
- d) Heart Rhythm And Rate
- e) Migraine Headaches

² Innovative regional high school preparing students for college and careers in computer science and coding.

- f) Weight Gain
- g) Overall Chronic Pain
- h) Lymes Disease Active
- i) Shingles Activated (twice)
- j) Kidney Issues from Prolonged Sitting Caused by Transporting AH to and from BNU (See Paragraph 63)
- k) Nightmares And Tremors
- l) Emotional Stress
- m) Ulcers; and
- n) Nausea And Vomiting.

9. Negative Impacts on Plaintiff John Halvorsen

62) John Halvorsen, AH's father, has suffered and continues to suffer the following negative impact as a direct and proximate result of the foregoing:

- a) High Blood Pressure
- b) Sleep Deprivation
- c) Increased overtime for payment of legal fees, legal cost, and transportation costs.
- d) Weight Gain
- e) Headaches
- f) Anxiety; and
- g) Stress.

10. Negative Impacts on AH

63) AH has suffered and continues to suffer the following negative impacts as a direct and proximate result of the foregoing:

- a) Regression
- b) Anxiety
- c) Stress
- d) Weight gain
- e) Trust issues
- f) Loss of friends
- g) Normalcy; and
- h) PTSD from feeling he's "dumb".

11. Out of Pocket Expenses

64) Total transportation days 108; 188 miles/day total miles 20,304x65.5 cents/mile=\$13,299.12³, ⁴

65) Legal expenses to date: \$10,000.00.⁵

12. February 28, 2024 BNU's Notice of Unenrollment of AH

66) On or about February 28, 2024, BNU, the private placement school in which AH was enrolled, sent a letter to the Plaintiffs advising them that AH was going to be unenrolled at this facility, effective March 1, 2024, because "[a]s of today, February 28, 2024, BNU has not received any communication from Powhatan County Public Schools regarding their responsibility as the LEA nor their financial responsibility for the student's placement."

³ Plaintiff makes 2 trips per day 47 miles each trip or 94 miles per trip.

⁴ Christmas and Holidays not included.

⁵ Legal expenses include the costs of defending the CNS action instituted by the defendants; and appealing the writ of mandamus now pending. (See ¶¶ 40-42, above)

67) This notification means that AH will once again not be enrolled in any accredited school and consequently, he will be denied his constitutional right to a free education. (See Exhibit 1 attached).

68) Upon receipt of this letter, this has exacerbated the severe emotional distress the Plaintiffs have suffered and unless this Court intervenes as requested, this will continue.

CAUSES OF ACTION

Count 1

(Grounds for Temporary Restraining Order and Preliminary Injunction)

69) Plaintiffs restate, reallege and incorporate by reference the preceding paragraphs.

70) Plaintiffs have sufficient grounds for this Court to enter a temporary restraining order and preliminary injunction against Defendants Powhatan and Dr. Teigen requiring them to pay the outstanding tuition to BNU or whatever portion of that tuition that BNU will accept which will allow AH to be enrolled and remain enrolled in the school pending the outcome of this litigation.

71) Plaintiffs' meet the requirements for the issuance of a Temporary Restraining Order in that they will:

- a) likely to succeed on the merits of this litigation
- b) that they are likely to suffer irreparable harm in the absence of preliminary relief
- c) that that the balance of equities tips in their favor; and
- d) that an injunction is in the public interest.

Count 2

(Denial of Equal Protection by defendants Powhatan and Tiegen)

72) Plaintiffs restate, reallege and incorporate by reference the preceding paragraphs.

73) Defendants, as alleged in ¶ 59, above, pay tuition and transportation for Powhatan County public school children who are without disabilities to attend private schools would have failed and refused to do the same for AH, who has a disability.

74) Section 504 states: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

75) AH has been discriminated against because the Defendants excluded him from the benefit of attending a private school by paying his tuition and his transportation solely on the basis of his disability, while Defendants gave these benefits to public school children without a disability living in Powhatan County.

Count 3

(Denial of Due Process by Defendant Coons Who Is Being Sued Individually)

76) Plaintiffs restate, reallege, and incorporate by reference the preceding paragraphs.

77) Defendant Coons had the power and authority as Superintendent of Public Instruction to implement the remedies against the defendants available under CFR 200.339 and 200.208, including but not limited to restrictions on or withholding of federal funds.

78) Defendant Coons clearly found that the failure and refusal of the Defendants to pay AH's tuition to BNU and provide him with free transportation were violations.

79) She also threatened the Defendants in her August 28, 2023 letter to said Defendants expressing her great concern because of the Defendants' continuing delay in enrolling [AH] into BNU, which they had recommended in AH's IEP.

80) Defendant Coons has/had a ministerial and mandatory duty to carry out her warnings to the Defendants, as set forth in ¶ 57, above and her failure and refusal to do so constitutes a denial of the Plaintiffs' right to due process of law and necessitates that the Plaintiffs file this legal action at their expense.

81) Defendant Coons has failed and refused to carry out her warnings to the Defendants, as set forth in ¶ 57, above.

82) Defendant Coons has also contributed to the severe emotional distress of the Plaintiffs as alleged in Count 4, below.

Count 4

(Intentional Infliction of Emotional Distress against Defendants Powhatan, Tiegen and Coons)

83) Plaintiffs restate, reallege, and incorporate by reference the preceding paragraphs.

84) This action, which involves a state tort claim against Defendants Powhatan and Tiegen, is pursued under the pendent jurisdiction of this Court.

85) The actions of the individual Defendants, as set forth above, were intended to cause the Plaintiffs severe emotional distress, and the Defendants acted intentionally to punish the Plaintiffs and retaliate against them for challenging the Defendants' actions to deny AH's private placement and payment of his transportation expenses.

86) The actions of the Defendants named herein were reckless, such that they knew or should have known that their actions would cause Plaintiffs' severe emotional distress.

87) The conduct of Defendants proximately caused Plaintiffs' severe emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a Temporary Restraining Order and preliminary injunction requiring Defendants Powhatan and Teigen to pay the outstanding tuition to BNU or whatever portion of that tuition that BNU will accept which will allow AH to be enrolled and remain enrolled in the school pending the outcome of this litigation.
2. That the Court enter a permanent injunction following a hearing in this matter to continue paying AH's tuition to BNU.
3. Find and declare that Defendants Powhatan and Teigen discriminated against AH solely based on his disability for failing and refusing to pay his tuition and his transportation, while giving these same benefits to public school children without a disability living in Powhatan County.
4. Declare that Defendant Coons had the power and authority as Superintendent of Public Instruction to implement the remedies against the defendants available under CFR 200.339 and 200.208, including but not limited to restrictions on or withholding of federal funds and that she failed and refused to carry out her warnings to defendants Powhatan and Teigen and in so doing, she denied and violated AH's rights to equal protection under the law, as provided by the Fourteenth Amendment to the Constitution of the United States.
5. Award Plaintiffs \$3,500,000.00 against the Defendants jointly and severally in compensatory damages resulting from the actions of the Defendants.
6. Award AH and the other Plaintiffs \$350,000.00 in punitive damages jointly and severally against Defendants Teigen and Coons.

7. Award Plaintiff their attorney's fees and taxable costs of this litigation to the maximum extent allowed.
8. Award Plaintiffs such other and further relief as this Court deems appropriate and fair.

Respectfully submitted,
AH
Kathy B. Halvorsen
John Halvorsen

By



Counsel

Trial By Jury is Requested

Janipher W. Robinson (VSB #19586)
Robinson and Greene
2415 Westwood Ave.
Richmond, VA 23230
(804) 321-1728 (voice)
(804) 321-0679 (facsimile)
Email: robinsongreene1@verizon.net

Plaintiffs state under the penalty of perjury that the foregoing is true and accurate to the best of their knowledge and belief.

VIRGINIA:

CITY /COUNTY Henrico to wit:

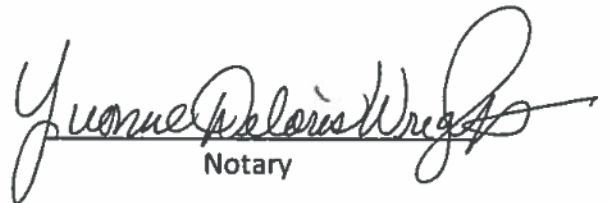
SWORN TO and ACKNOWLEDGED by JOHN HALVORSEN and KATHY B. HALVORSEN before me
this 14th day of March 2024.


JOHN HALVORSEN


KATHY B. HALVORSEN

My identification number: 7640754

My expiration date: 6/30/2027


Notary



JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN HALVORSEN
KATHY B. HALVORSEN

(b) County of Residence of First Listed Plaintiff Powhatan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Janipher W. Robinson
Robinson and Greene
2415 Westwood Ave.

DEFENDANTS

POWHATAN COUNTY PUBLIC SCHOOLS
DR. BETH TEIGEN

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$3,500,000.00 \$350 B

CHECK YES only if demanded in complaint.
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
March 14, 2024

SIGNATURE OF ATTORNEY OF RECORD

Janipher W. Robinson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**JOHN HALVORSEN
KATHY B. HALVORSEN,**

Plaintiffs,

v.

Civil Action No.:

**POWHATAN COUNTY PUBLIC SCHOOLS
PCPS**

and

**DR. BETH TEIGEN, Individually and in her
official capacity as SUPERINTENDENT OF
POWHATAN COUNTY PUBLIC SCHOOLS**

and

DR. LISA COONS, Individually,

Defendants.

**MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

COME NOW, the Plaintiffs, John Halvorsen and Kathy B. Halvorsen, by and through their counsel, and pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, move this Court for a Temporary Restraining Order and a Preliminary Injunction and in support thereof, set forth the factual and legal grounds for this Court to enter this requested relief as set forth in the Memorandum in Support which is attached hereto.

Respectfully submitted,
AH
Kathy B. Halvorsen
John Halvorsen

By 
Counsel

Janipher W. Robinson (VSB #19586)
Robinson and Greene
2415 Westwood Ave.
Richmond, VA 23230
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(804) 321-0679 (facsimile)
Email: robinsongreene1@verizon.net

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
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PCPS**

and

**DR. BETH TEIGEN, Individually and in her
official capacity as SUPERINTENDENT OF
POWHATAN COUNTY PUBLIC SCHOOLS**

and

DR. LISA COONS, Individually,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

John Halvorsen and Kathy B. Halvorsen, the parents of AH, filed a Complaint against Powhatan Public Schools (hereinafter “PCPS”) and others pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq, and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 1983 and 12101 *et seq.*, (“ADA”) challenging the failure and refusal to pay the tuition for AH to attend Believe-N-You Academic Center (hereinafter “BNU”) after PCPS agreed in AH’s IEP that this would be the appropriate private placement for AH who was/is a child with disabilities. BNU agreed to enroll AH without an initial payment of the tuition.

The Plaintiffs refused to give CSA their consent to allow CSA to pay BNU's tuition because there was a requirement that they had to include their personal and financial information to allow CSA to pay for AH's tuition. Despite the fact that Powhattan was advised that if CSA did not pay the tuition, then the school system was responsible to pay the tuition by virtue of the right of AH to a Free Appropriate Public Education (FAPE) (8 VAC20-81, Section M-3) under the Individuals with Disabilities Education Act (IDEA).

On or about June 23, 2023, the Assistant Superintendent Department of Special Education, Dr. Samantha Marsh Hollins advised Powhatan that it was responsible to pay the tuition and that if it continued to refuse to pay the tuition, the matter would be turned over to the Superintendent of Public Instruction for further action.

On August 28, 2023, Dr. Lisa Coons, Superintendent of Public Instruction, sent a letter to the defendants expressing great concern because of the continuing delay in paying BNU for AH's tuition in accordance with a June 27, 2022, Implementation Plan and that there was no requirement in the Code of Virginia that restricts the payment source for public placements in private day schools to these funds... And that such a requirement would be contrary to federal law, as the Individuals with Disabilities Education Act (IDEA) simply does not allow the provision of FAPE to be conditioned on a funding source." She further advised PCPS that it "could no longer delay completion of the placement... and if ... PCPS continue[s] to delay actions to comply, the VDOE will seek remedies available under CFR 200.339 and 200.208, which may include restrictions on or withholding of federal funding."

Dr. Coons did not follow through her threatened actions and Powhatan continued to refuse to pay AH's tuition at BNU.

On or about February 28, 2024, BNU advised AH's parents that they were going to unenroll AH "at this facility, effective March 1, 2024, because, BNU has not received any communication from Powhatan Public Schools regarding their responsibility as the LEA nor their financial responsibility for the student's placement."

AH is no longer enrolled at BNU nor is he enrolled in any other school because his parents are unable to afford to pay tuition at a private school and they are unable to provide him with homeschooling because they have no training in special education.

AH's mother has recently indicated the following with regard to the enrollment of her son:

"[AH] continues to question "why [he's not attending BNU] and asked if he is bad. We continue to [tell him] that he does amazing things and is so very smart. He cries for his two best friends and thinks he won't ever see them for another 664 days.

During the day, we work on schoolwork, watch movies, and go to the science museum. He requires more challenging activities to keep him engaged. At times, he seems far away, and when questioned what's wrong, he says something about school. When he is out with me and sees a school bus, he states, "No Powhatan."

When he is withdrawn or sad he goes outside and swings in his sensory swing. He is waking up 2 or 3 times during the night."

AH' mother also indicates the impact on her because of AH's being unenrolled:

My anxiety and Post Traumatic Stress Disorder for myself are at high levels, and sentences are under enrollment; I had to be placed on Wellbutrin and Hydroxyzine. I stay nauseated and on Zofran for episodes of vomiting to a constant feeling of nausea daily. I am constantly awake through the night, operating in the land of anxiety. Also, I had to be placed on blood pressure medications.

ARGUMENT

To obtain a temporary restraining order, a Plaintiff must show: (1) a likelihood of success on the merits of its claims, (2) a likelihood of irreparable harm in the absence of the requested

preliminary relief; (3) that the balance of equities favors the plaintiff; and (4) that an injunction is in the public interest. *See Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346–47 (4th Cir. 2009) (setting forth standard for obtaining a preliminary injunction); *Variable Annuity Life Ins. Co. v. Coreth*, 535 F. Supp. 3d 488, 501 (E.D. Va. 2021) (the standard for a preliminary injunction and temporary restraining order are the same).

The allegations and evidence in the complaint support Plaintiffs’ request for an emergency motion, and, there is good cause for this Court to conclude that the Defendant has engaged in, and is likely to continue to discriminate against AH because of his disability and his right to be compensated for private placement based on the consent of the Defendant in his current IEP.

Moreover, there is ample evidence that AH’ parents are not required to consent to CSA funding and that the ultimate burden is on the Defendant to finance or paying for the private placement of AH at BNU, which is evidenced by the fact that his attendance at BNU was agreed to by both his parents and the LEA.

The fact that the Superintendent of Public education in Virginia has ordered Powhatan County to pay AH’s tuition at BNU and Powhatan County has taken no action to appeal that decision in any court or administrative agency indicates that it concedes to its having to pay AH’s tuition at BNU.

There is ample evidence for this Court to conclude that Plaintiffs have and will continue to suffer irreparable harm in the absence of the requested temporary restraining order.

Plaintiffs stand to suffer serious harm by the no enrollment of AH from BNU and that unless this Court grants the requested injunctive relief the serious harm will continue. Moreover, this Court does not find any likelihood of harm to Defendant if relief is granted given that

defendant has not challenged that it agreed to private placement at BNU, and that it has the ultimate responsibility of paying for the private placement of AH.

The public has an interest in the continued, unfettered education of children with disabilities and preventing or avoiding the plaintiffs from continued irreparable harm. For these reasons, the public interest is not violated by injunctive relief, but instead is served.

The scope of the injunctive relief requested by the plaintiffs is narrowly tailored and proper in that the requested injunctive relief does not overly burden Defendant or provide more relief than necessary.

Finally, the request by the Plaintiffs satisfies the requirements of applicable rules and law pertaining to the requested temporary restraining order and is reasonable and necessary to protect Plaintiffs' interests and those of the public.

WHEREFORE, Plaintiffs respectfully request that this Court enter Plaintiffs' request for a Temporary Restraining Order and preliminary injunction requiring Defendants Powhatan County Public Schools and Dr. Teigen pay the outstanding tuition to BNU, or whatever portion of that tuition that BNU will accept which will allow AH to remain enrolled in the school pending the outcome of this litigation.

Respectfully submitted,
AH
Kathy B. Halvorsen
John Halvorsen

By 
Counsel

Janipher W. Robinson (VSB #19586)
Robinson and Greene
2415 Westwood Ave.
Richmond, VA 23230
(804) 321-1728 (voice)
(804) 321-0679 (facsimile)
Email: robinsongreene1@verizon.net

Plaintiffs state under the penalty of perjury that the information contained in their request for a Temporary Restraining Order and preliminary injunction are true and accurate to the best of their knowledge and belief.

VIRGINIA:
CITY /COUNTY Henrico to wit:

SWORN TO and ACKNOWLEDGED by JOHN HALVORSEN and KATHY B. HALVORSEN before me this 14th day of March 2024.



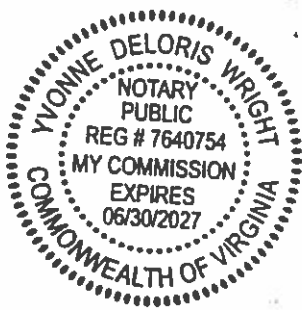
JOHN HALVORSEN

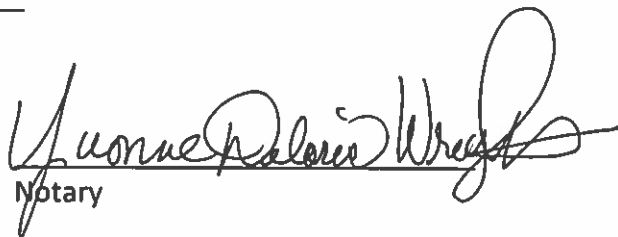


KATHY B. HALVORSEN

My commission expires: 6/30/2027

My identification number: 7640754




Notary