

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA JOHNSON, ex rel. **PAULA JOHNSON**,
on behalf of themselves and all similarly-situated persons,

Plaintiff,

Case No.: _____

v.

Honorable _____

DETROIT PUBLIC SCHOOL DISTRICT,

Defendant.

MILLER COHEN, P.L.C.

Robert D. Fetter (P-68816)

Attorney for Plaintiffs

600 W. Lafayette 4th Floor

Detroit, Michigan 48226

(313) 964-4454

**PLAINTIFF'S VERIFIED CLASS ACTION
COMPLAINT FOR INJUNCTIVE RELIEF**

NOW COMES Plaintiff, Joshua Johnson, by the relation of Paula Johnson [hereinafter "Plaintiff"], on behalf of himself and all other similarly-situated persons, by and through his attorneys, Miller Cohen, P.L.C. and for his Verified Class Action Complaint for Injunctive Relief for Temporary Restraining Order against the Detroit Public School District [hereinafter "District"] states the following:

I. INTRODUCTION

1. Plaintiff, by relation of his mother, and on behalf of similarly situated plaintiffs, bring this action seeking an injunction against scheduled layoffs for over eighty-eight (88) bus attendants employed by the District, in order to maintain the status quo until a hearing on the merits. These layoffs are scheduled for Friday, January 14, 2011. (*Exhibit 1*) These bus

attendants provide support services to the District's students with disabilities and special needs. They assist, protect, and supervise the children in getting on and off of the bus and while the bus is in transport. They are necessary for the safety and welfare of the students. Federal law mandates these services as a condition of receiving federal funds. The Federal funds that the District receives pays for these services. The District is reducing a mandated service to children with disabilities and special needs, so that it can use the funds provided for this service elsewhere within the District. This action will cause irreparable harm to the children because for at least half of the routes currently serviced, the children will no longer have the assistance, protection, or supervision of the bus attendants.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this case as Plaintiffs bring an "action" arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

3. Plaintiff is not required to exhaust its administrative remedies under the *Individuals with Disabilities Education Act (IDEA)* because the Defendant will be unable to act according to Plaintiff's IEP due to the layoffs, which cannot be remedied through the administrative process.

4. Venue is appropriate in the Eastern District of Michigan because the transactions, which are the subject of this complaint all occurred in Detroit Michigan.

III. PARTIES

5. Plaintiff is in the fifth grade at White Elementary and brings this action for himself and as a representative plaintiff. His mother, Paula Johnson, brings this action on his behalf.

6. Plaintiff intends to certify a class of plaintiffs.

7. Defendant District is a government entity and doing business in the City of Detroit.

IV. CLASS REPRESENTATION

8. This action is brought by the Plaintiff on behalf of himself and all other persons similarly situated whose joinder in this action is impracticable because the class is so numerous numbering in the thousands. The proposed class consists of all children with disabilities or special needs as defined by the IDEA who are students at Detroit Public Schools and who require bus attendant aid in transport to school every morning.

9. There are questions of law or fact common to the members of the class that predominate over question of law or fact affecting only individual members. The questions of law or fact common to all members of the class are: they are children disabled for purposes of IDEA who not only require transport, but support services from bus attendants during transport. They are all entitled to relief under IDEA.

10. The claims of the named Plaintiff are for the entire class and are therefore typical of the claims of the class.

11. Plaintiff is a similarly situated child being represented by his parent and there is no reason to doubt that they will fairly and adequately protect the interests of the class.

12. The maintenance of this action as a class action is superior to other available methods of adjudication in promoting the convenient administration of justice and in achieving a fair and efficient adjudication of the controversy in this matter because the prosecution of separate action by or against individual members of the class would create a risk of (1) inconsistent or varying adjudications with respect to individual members of the class that would confront the Defendant with incompatible standards of conduct and (2) adjudications with

respect to individual members of the class that would as practical matter be dispositive of the interests of other members of the class not parties to the adjudications or substantially impair or impede their ability to protect their interest because in view of the complexity of the issues and the expense of litigation, the separate claims of the individual class members are insufficient in amount to support the prosecution of separate actions because the amount recoverable for each individual member would be insufficient to cover the costs of litigation.

V. GENERAL ALLEGATIONS

13. Named Plaintiff suffers from autism. His condition causes him to have problems in confined locations, eye contact, touching, and different odors or sounds. Over exposure to sensory stimuli causes those with autism to engage in disruptive behavior, tantrums, and even violence against themselves or others. He also has a tendency to run if he suffers from a tantrum.

14. For the last three school years, Plaintiff has received “special transportation” in the form of bus transportation with a bus attendant there to supervise and help Plaintiff onto the bus, on the trip to school, and off the bus when arrives at its destination. The most recent individualized education program (IEP) required the District to provide “curb-to-curb” services. (*Exhibit 2*) For those three school years, Plaintiff has had the same bus attendant for the entire school year. During that time, travel by bus with his fellow students has been instrumental in his treatment because it is essential to Plaintiff to learn how to socialize.

15. On January, 12, 2011, there was no bus attendant that came off of the bus to assist Plaintiff onto the bus. Ms. Johnson inquired as the absence of the bus attendant. The bus driver indicated that the bus attendant was laid off and there would be no bus attendant. Every one of the children on Plaintiff’s bus are special needs children. The District has eliminated bus attendants even for buses with 100% special needs children. On the morning of January 13,

2011, again there was no bus attendant on Plaintiff's special needs bus. Ms. Johnson would not put Joshua on the bus without a bus attendant.

16. IDEA requires states to provide substantial financial assistance to children with disabilities, so that all children have access to free and appropriate public education and related services regardless of disability. 20 U.S.C. § 1412. Related services include transportation. 20 U.S.C. § 1413(a)(4).

17. Pursuant to providing a free and appropriate public education and related services, federal regulations require that an individualized education program (IEP) to include a "statement of the special education and related services . . . that will be provided for the child . . . to be educated . . ." for each student. 34 C.F.R. §§ 300.341(a)(1), 300.347(a)(3).

18. Plaintiff is "disabled" for the purposes of IDEA, as recognized by the District providing Plaintiff an IEP stating that he will receive "special transportation."

19. IDEA mandates that public agencies, such as the District, maintain children with disabilities in their current educational placement during the pendency of proceedings. 20 USC § 1415(j).

20. The District has over 15,000 children with disabilities within the District. Many of these students require "special transportation."

21. Consistency is critical to Plaintiff's care. As an autistic child, Plaintiff requires constant adult monitoring. The bus attendant assists with getting Plaintiff onto the bus, which is difficult for Plaintiff due to the symptomology of his disability. On the bus, the bus attendant assists Plaintiff if he has a tantrum. The bus attendant protects Plaintiff from harming himself and others. The bus attendant also supervises Plaintiff while he is on the bus and would prevent him from running away.

22. However, after the January 14th layoffs, the District will only employ eighty-seven (87) bus attendants. Each route that requires attendants must have at least one attendant. On January 12, 2011, Plaintiff's mother attempted to put Plaintiff on the bus, but no bus attendant was present. When Plaintiff's mother asked the bus driver where the attendant was, the driver responded that the attendant had been laid off. Every student on Plaintiff's bus is a special needs child.

23. Upon information and belief, the District's department of transportation conducted a review of the students' IEPs and the bus routes after it announced the layoffs. The review was submitted to Emergency Financial Manager, Robert Bobb.

24. Upon information and belief, the review found that in order to properly service the children with disabilities in the District, it was necessary to rescind the layoff notices and actually hire additional bus attendants. The District had previously identified 114 bus routes that require attendants. However, many additional routes require "special transportation" and these routes require the assistance of bus attendants specifically mentioned in the IEP because the parents assume that bus attendants have been and will continue to be the major element of the special transportation for children with disabilities. Therefore, the report found that it is necessary to rescind the layoffs and hire more bus attendants. Mr. Bobb ignored the requirements of the IDEA and has refused to rescind the layoffs, which put the children in harm's way.

25. Additionally, the District had previously attempted to lay off bus attendants in 2009.

26. However, according to Steve Wasko, a spokesperson for the District, the District rescinded that lay off after a "further investigation made it clear that the services should

continue.” Detroit Free Press, August 3, 2009. There has been no reduction of the necessity of the mandated services that the bus attendants provide to the children with disabilities since 2009.

27. In the Districts IEP’s for students with disabilities, the District has offered “specialized transportation” and vehicles with special equipment to accommodate particular disabilities. The parents of disabled children have always been provided with a bus attendant as part of their specialized transportation. This gave great comfort to the parents because they knew that an adult, other than the bus driver, who is busy driving the bus, would be available to supervise, protect, and assist their child in their commute to and from school.

28. Parents of special needs children are concerned about the diminishing quality of their child’s protection, assistance, and supervision if the bus attendants are laid off. Bus attendants have been a part of the specialized transportation, although not specifically mentioned in the IEP, for many decades and parents have come to rely on this support service. Once the District announced that it was reducing this support service for children with disabilities, over twelve hundred (1,200) parents have signed parental requests for bus attendant services to be written into the IEP reports of special needs children attending Detroit Public Schools because the parents understand the great need for the support services that the bus attendant provides. (*Exhibit 3*) Considering the already limited numbers of personnel and the incredible demand for these services, a layoff implemented now will eliminate those services required under federal statute to Plaintiff and others in Plaintiff’s position.

29. The District has not provided notice of the layoff’s effect on related services, nor has the District provided the opportunity for parents to present a complaint as required under the IDEA. Notice to any changes to the program must be given to the parents and the parents have an opportunity to an administrative process to dispute the change. The parents have been

deprived of this opportunity. The parents only learned of the elimination of the service through local news coverage and from the bus attendants themselves.

30. A lack of bus attendant supervision is likely to cause irreparable harm to class members in that they are a danger to themselves and others considering their disability.

31. The threat to the health, safety, and welfare of the students and the limits that these layoffs place on children with disabilities clearly outweighs the governmental interest in budget cutting. The District receives federal funding to provide this service. The District has already been issued \$5,000,000 in penalties for recent IDEA violations. Further violations on a mass scale would not support the financial viability of the District.

32. Finally, the public policy communicated through IDEA is to provide students with disabilities every opportunity to attend free public school while accommodating their special concerns. Parents will be reluctant to send their children to school if they are unattended while on a bus. The legitimate safety and welfare concerns of the parents regarding their children will present a barrier to free access to public education as mandated under the IDEA.

COUNT I
INJUNCTIVE RELIEF

33. All previous allegations are incorporated herein by reference.

34. Plaintiff is likely to prevail on the merits. The IEPs require and the children have a right to reasonably expect “special transportation” arrangements, including curb-to-curb supervision.

35. There is no adequate remedy at law that will restore class members’ ability to attend public schools without risking themselves or others.

36. Class members will suffer irreparable harm by the Defendant’s refusal to maintain the status quo and maintain the services of the bus attendants as promised by the IEPs.

37. The requested injunctive relief will not harm the public interest. Certainly, there is a public interest in managing budget deficits; however, IDEA requirements are federally funded. The District again puts that funding at risk by violating the requirements of the Act. There is a greater public interest in broadening access to the public education system to all children regardless of disability that will be done a great disservice by allowing this proposed layoff.

V. REQUEST FOR RELIEF

WHEREFORE, and for the above-stated reasons, Plaintiff requests that this Court grant relief as follows:

- a. grant a temporary restraining order restraining the Detroit Public School District from laying off eighty-eight (88) bus attendants scheduled for the end of the day on January 14, 2011.
- b. issue and order a preliminary and a permanent injunction.
- c. retain jurisdiction to determine the merit or need of any further equitable relief this Court deems just and equitable.
- d. award attorney's fees and costs associated with litigating this action.

Respectfully submitted,

MILLER COHEN, P.L.C.

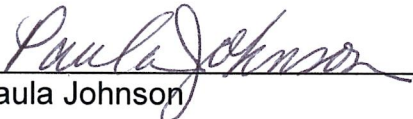
By: /s/Robert D. Fetter

Robert D. Fetter (P-68816)
Attorney for Plaintiff
600 W. Lafayette Blvd., 4th Floor
Detroit, MI 48226
(313) 964-4454
rfetter@millercohen.com

Dated: January 13, 2011

VERIFICATION

I declare that the factual statements above are true to the best of my information, knowledge and belief, except as to those statements made upon information and belief and legal opinions.



Paula Johnson

Dated: January 12, 2011