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Jeffrey Sussman

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DISABILITY RIGHTS GROUP CHALLENGES PROPOSED SCHOOL FOR DISABLED

By JEFFREY SUSSMAN

Walworth County, Wisconsin recently approved plans to build a \$22 million school to educate local disabled students.¹ The proposed Lakeland school would replace a school that carries the same name and currently accommodates 260 students.² The new 105-thousand square foot facility would be over 40 thousand square feet larger than the current facility.³ However, a disability rights group is going to court to stop its construction.⁴

In a class action lawsuit filed in Federal Court, Disability Rights Wisconsin (“DRW”) contends the proposed Lakeland school would violate the Americans

with Disabilities Act, which mandates disabled students are taught in the most integrated and least restrictive environment.⁵

The County recently filed a motion to dismiss the suit,⁶ stating that the complaint fails to identify anyone injured by the school's construction and therefore the plaintiff lacks standing to bring suit.⁷

"A protection and advocacy agency bringing suit on behalf of another must identify a specific constituent who is being harmed by the defendant's actions" and this complaint fails to do so, reads a memo filed with the court.⁸

However, the county believes it would win on the merits. It states that "[t]he lack of a casual connection is apparent by DRW's failure to allege that the county board has mandated enrollment in the new school."⁹

"Children throughout the county have the right to be in the least restrictive environment. Walworth County is so far away from that," says Jeffrey Spitzer-Resnick, the managing attorney for DRW.¹⁰ To DRW, this larger school means a greater separation of disabled students from their peers.¹¹

"Walworth County's decision was to not only build a new school, but to build a bigger school, to put it on the county grounds where the nursing home and jail is, and to build a seven-foot fence around it," Spitzer-Resnick explains.¹²

According to the complaint, in the 2003-04 school years, less than 1 percent of all disabled students statewide were taught in separate schools.¹³ Yet, greater than 11 percent of Walworth County's disabled students are taught in segregated facilities.¹⁴ DRW claims this new school will cause the county to further deviate from the status quo by separating too many disabled students from an integrated environment.¹⁵ DRW explains, "if [Walworth County] were building a smaller school, we wouldn't be suing them."¹⁶

DRW contends that this new school could affect parents of disabled children who hope to opt out of attending Lakeland school.¹⁷

"[P]arents of students with disabilities do not have total control over where their children go to public school," said DRW; "[r]ather they have the right to have input into that decision."¹⁸ The disability rights group suggests that the

higher capacity at the new school would dilute the influence of parental input.¹⁹

“What this is doing is going against my civil rights and my child’s civil rights to have an education,” says Christine Eggie, a parent of a disabled child who attends the current Lakeland school and disagrees with DRW’s attempt to stop the school’s construction.²⁰ “There are students that need that [school], that thrive in that environment,” says Barbara McComb whose 18-year old son has attended the Lakeland school since he was three.²¹

Walworth County director of special education, Tracy Moate, also disagrees with DRW’s actions.²² She explains that even when disabled students are kept in the same school as those with special needs, it does not mean that they are able to interact with the nondisabled population.²³

Moate points out that even if “severe and (profoundly disabled) kids are in an integrated setting, . . . they’re in a class that’s self-contained, they eat their lunch in a classroom, they get off the bus and stay in their classroom for the day.”²⁴ She suggests that the new school, despite its size, location, and student body, might not be any more segregated than other education programs for the disabled.²⁵

NOTES

1 Amy Hetzner, *School for Disabled Challenged in Lawsuit*, MILWAUKEE J. SENTINEL, July 31, 2006, at B04.

2 *Id.*

3 Mike Heine, *Disability Group Sues Walworth County Board*, THE JANESVILLE GAZETTE (WI), Aug. 1, 2006.

4 Hetzner, *supra* note 1.

5 Heine, *supra* note 3.

6 Disability Rights Wisconsin, ANSWERS TO FREQUENTLY ASKED QUESTIONS REGARDING *Disability Rights Wisconsin v. Walworth County Board of Supervisors*, available at <http://www.w-c-a.org/pdfs/lakelandfaq.pdf> (last visited Dec. 3, 2006).

7 Mike Heine, *Walworth County Asks for Dismissal of School Suit*, THE JANESVILLE GAZETTE (WI), Aug 30, 2006.

8 *Id.*

9 *Id.*

10 Heine, *supra* note 3.

11 Hetzner, *supra* note 1.

12 *Id.*

13 First Amended Complaint at ¶ 11, Disability Rights Wis. Inc. v. Walworth County Bd. of Supervisors, (E.D. Wis. Aug. 2, 2006) (No. 06-C-0813), 2006 WL 2706328.

14 *Id.* at ¶ 8.

15 Heine, *supra* note 3.

16 *Id.*

17 Disability Rights Wisconsin, ANSWERS TO FREQUENTLY ASKED QUESTIONS REGARDING Disability Rights Wisconsin v. Walworth County Board of Supervisors, available at <http://www.w-c-a.org/pdfs/lakelandfaq.pdf>.

18 *Id.*

19 *Id.*

20 Heine, *supra* note 3.

21 Hetzner, *supra* note 1.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*