

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT WELLMAN)	
Plaintiff,)	JURY TRIAL REQUESTED
)	
v.)	Ca. No.
)	
BUTLER AREA SCHOOL DISTRICT AND)	
DR. JOHN WYLLIE, individually, and in his)	
capacity as principal of the Butler Area High)	
School,)	
Defendants.)	

COMPLAINT

Statement of Jurisdiction

1. This is an action asserting claims under Section 504 of the Rehabilitation Act, and Title II of the American with Disabilities Act (ADA). This court has jurisdiction over these claims by virtue of 29 U.S.C. § 794a(a)(2) and 42 U.S.C. § 12133. This action also asserts claims under the Civil Rights Act of 1871, *as amended*, 42 U.S.C. § 1983. This court has jurisdiction over these claims by virtue of 28 U.S.C. § 1331.

Parties

2. Plaintiff, Robert Wellman, is an adult individual who resides in the Western District of Pennsylvania
3. Defendant, Butler Area School District, is a governmental entity, which provides free public education to students in the Butler area.
4. Defendant, John Wyllie, is an adult individual who was principal of Butler Area High School at all times relevant to this action.

Statement of Facts

5. Wellman was a student at the Butler Area High School as a freshman when the events which support this claim occurred. He participated in Butler's football program, and was a member of the interscholastic football team.
6. On August 31, 2009, Wellman suffered an injury at school. The injury occurred in physical education class, and resulted in a concussion. Wellman was playing flag football in gym class when he was hit in the head by another student. The injury was serious, and resulted in Wellman spitting blood, he had severe pain in his jaw and he chipped a tooth.
7. In spite of suffering these injuries, Wellman was not seen by the school nurse. In fact, failing to appreciate the serious nature of his injury, and not being examined by any medical professional, he attended football practice after school that afternoon. During the course of the team practice, Wellman suffered additional injuries to his head. By the time football practice was over, Wellman was dizzy and nauseous.
8. The following day, Wellman went to the dentist to get his jaw and chipped tooth examined. His dentist suggested Wellman see his PCP. Wellman was examined by his PCP the same day, and was referred for a CT scan. The CT scan confirmed that Wellman had sustained a concussion. Wellman was experiencing pain, starring, trouble sleeping and trouble concentrating. The symptoms were persistent, and there was no indication of when the symptoms would reside.

9. Wellman's mother, Rebecca Wellman, called the school on September 2, 2009 to let the school personnel know that Wellman would be returning to school, but that he would need help until his concussion healed. Specifically, Ms. Wellman sought accommodations. She asked Wellman's counselor to take him out of his German class and physical education class so Wellman would have extra study halls so he could rest. She also asked that Wellman's teachers and football coach be made aware of his situation so that Wellman would not have to engage in any unsuitable activity, or any activity which might aggravate his symptoms or condition.
10. Wellman returned to school on September 7, 2009. Instead of listening to Ms. Wellman's instructions, two of Wellman's teachers pulled him out of his extra study halls so he could take make-up exams.
11. Wellman was not immediately removed from physical education. He was made to watch from the bleachers which were five feet off the ground. Wellman was forced to climb on them and then jump to get back down. When the students played dodge ball, Wellman's physical education teacher stood in front of him in an attempt to block him from being hit with the ball. Ms. Wellman called a second time to have Wellman removed from his physical education class.
12. On September 14, 2009, Wellman went to Children's Hospital because of the symptoms he was exhibiting, and underwent an EEG test. Dr. Ira Bergman wrote a letter to the principal, Dr. John Wyllie, asking for academic

accommodations, and asking the school to contact him with questions. His letter was ignored, and Wellman was not given any accommodations.

13. When Wellman returned to school September 15, 2009, it was under his doctor's release or requests for accommodations, including more time to complete assignments, and tutors to help him at school. His mother again reminded the school of her son's injury and the need for accommodations. However, once again Wellman was given no support and the request for accommodations was ignored. Wellman was worried about his grades, and the fact that no one was helping him. Wellman was having trouble getting his work done, and could not work for long periods of time.

14. On September 30, 2009, Wellman went to school, and attended the football game in the evening. Prior to Wellman attending the game, Ms. Wellman called his football coach, and informed the coach that Wellman had a concussion. She explained that Wellman was not cleared to participate in the game, but he wanted to attend the game to support his teammates.

15. Wellman went to the game on September 30th with the expectation that he would sit on the sideline and support his team. Instead, his coach ignored Ms. Wellman's warnings, and told Wellman to act as a lineman and hold one of the flags on the side of the field. Wellman was not dressed to participate in the game, and was not wearing any protective gear. Wellman was reinjured during that game, when a player, in full pads and uniform, ran into him knocking him over during a play. Wellman hit his head off of the ground when he fell backwards. The coach from the opposing team helped him off

the ground. Wellman was on the opposite side of the field from his teammates, and continued to hold the flag for the remainder of the game. After this incident his concussion symptoms significantly worsened. This event occurred because the coach refused to provide accommodations.

16. The following day, Wellman underwent another CT scan. He was having terrible headaches after hitting his head a second time. Over the next week, Wellman experienced symptoms which included headaches, sharp pains in his head, trouble focusing, weakness and feelings of exhaustion. The medication he was taking for his concussion was also contributing to his fatigue.

17. As a result of this second incident, his injuries Wellman was diagnosed with post-concussive syndrome with symptoms which included headaches as well as other cognitive issues including difficulty concentrating, remembering, and processing information, difficulty sleeping and severe anxiety.

18. During this time period, Wellman was missing school for doctor's appointments, and because of his symptoms. When he did go to school, his teachers continued to ignore his doctor's request for accommodations. They were giving Wellman more work than he could handle, and they were not letting him rest.

19. On October 14, 2009, Wellman and his mother met with Dr. Wyllie to discuss the fact that his teachers were ignoring his doctor's requests, and were giving Wellman too much work. Ms. Wellman asked Dr. Wyllie to treat Wellman like he has a learning disability until he is healed. Dr. Wyllie was dismissive,

and told her everything would work out. By this time, Wellman was very anxious about the lack of support he was receiving from the school. Wellman was reluctant to return to school.

20. Ms. Wellman decided to ask Wellman's doctor to put him on homebound instruction until Wellman's condition improved since he was not getting the accommodations he needed from the school administrators and his teachers. Wellman was approved for homebound instruction on October 21, 2009.

21. Wellman started to receive homebound instruction for math, honors English, history and science. The School District did not provide an instructor for Latin, explaining there were none available. The math teacher was sympathetic and actively helped Wellman, but the other teacher assigned to provide instruction to Wellman with the remaining three subjects was generally apathetic and only stayed for one hour to teach three subjects. That teacher did not help Wellman at all. Instead, she would talk about unrelated topics during the time they spent together.

22. Ms. Wellman complained to Assistant Superintendent Dr. Michael Strutt about the teacher's poor performance teaching Wellman English, science and history. She also spoke with Dr. Wyllie. Nothing was done, and the teacher continued her poor performance. Some days she would show up for only an hour, and others she would cancel altogether. In December 2009, Wellman received new homebound instructors. These instructors were better than the previous one.

23. One symptom of Wellman's concussion was severe and debilitating anxiety. He was diagnosed with anxiety disorder due to a medical condition.
24. Wellman attempted to go back to school in March 1, 2009, but his anxiety level was very high, and his teachers were not helping him cope, or giving him the necessary accommodations. Wellman went back on homebound on March 11, 2009, and remained on home bound until the following school year.
25. Wellman attempted to go back to school again the following school year. The first day of school was August 26, 2010. When Wellman attempted to return to school he experienced severe anxiety after being out of school for the majority of the previous year.
26. Wellman spoke with his school guidance counselor about his anxiety on August 27, 2010. Wellman told her he was feeling overwhelmed. He asked that the school make an accommodation for him by changing his lunch so he could eat lunch with a friend. He did not know anyone in the period in which he was scheduled to eat lunch. Wellman was denied this simple request.
27. Ms. Wellman then called the school the following day to inform the school personnel that Wellman was having a difficult time adjusting after being out of school for most of the previous year. She explained that Wellman did not know anyone in his lunch period, and again asked that his lunch period be switched so he can sit with a friend at lunch. Ms. Wellman was informed that they would not be able to accommodate Wellman in that way.

28. On August 31, 2010, Wellman went to the Dr. Wyllie once again to request a change in lunch periods. He was told the other lunch periods were full. When Ms. Wellman called again the following day, she received the same answer. The school refused to accommodate Wellman's simple request, which would have help significantly to lower his anxiety level.
29. By September 2, 2010, Wellman was again unable to go back to school. He was having panic attacks, and severe anxiety over returning to school. Wellman was again placed on homebound instruction, and he began therapy sessions to help him deal with his anxiety and stress.
30. On October 21, 2010, a meeting was held between Ms. Wellman, Wellman's therapists Dr. Chandra Taormina and Brian McKain, and school district officials including Dr. Wyllie, the guidance counselor, Allecia Mowrey, and the assistant principal, Mary Machattie. Wellman did not attend this meeting because he was still attempting to overcome the anxiety and panic attacks he experienced when entering the school building. The meeting was assembled to assist Wellman in going back to school. Wellman's doctors were there to inform school district officials of Wellman's post-concussion needs, and to assist in drafting a 504 plan to accommodate him.
31. The accommodations Wellman's doctors sought included extra time to complete tests, testing in a quiet environment, and testing across multiple periods, allowing Wellman to obtain notes and outlines ahead of time and by photocopying, workload reduction and allow for extra makeup time, allowing Wellman to take breaks as needed to reduce symptoms, as well as stress and

anxiety levels, and finally to change Wellman's lunch period so he can eat with a friend.

32. On December 20, 2010, a second meeting was held. This time Wellman did attend along with Ms. Wellman, Wellman's therapist Dr. Chandra Taormina, and school district officials including Dr. Wyllie, the Ms. Mowery and Ms. Machattie. This meeting was assembled to assist Wellman in overcoming his anxiety related to the school district, and to make any necessary modifications to the 504 plan established after the October 2010 meeting. This meeting did not go well. The school district officials were not interested in assisting Wellman. Instead, they spoke to him in a demeaning way, and reinforced his belief that he would not receive the help he needed. Dr. Wyllie did not acknowledge Wellman's presence at the start of the meeting. Wellman tried to participate in the meeting and offer solutions, but Dr. Wyllie did not take any of Wellman's suggestions seriously. Ms. Machattie said they were the educators and they know what they are doing. Wellman did not feel supported by any of the administrators, which only further exacerbated his anxiety symptoms related to returning to school.

33. By January 2010, Wellman could not go near the school building without experiencing severe anxiety attacks. He enrolled in Cyber School, and finished out the remainder of the school year that way.

34. The following year Wellman enrolled in St. Joseph's High School. He continued to suffer from panic attacks at the thought of going back to school. Unlike the Butler Area School District, the administration at St. Joseph's

worked with Wellman to gain his trust, and make him feel comfortable. It took over six months to get his anxiety under control, but with the support of the staff, Wellman was able to eventually return to school with a more manageable amount of anxiety.

35. On May 13, 2011 Mr. and Ms. Wellman attended a meeting along with Wellman and Assistant Superintendent Dr. Strutt. Ms. Wellman requested that Butler School District pay for Wellman's private education. Dr. Strutt refused this request. Ms. Wellman also inquired as to why Wellman had not been placed in a program for head injuries called Brain Steps which was offered through the Butler Area School District. Dr. Strutt's response was that Brain Steps is for kids with traumatic brain injury, and Wellman only has a concussion. The school district would never recognize that Wellman's concussion was a traumatic brain injury, and accommodate him accordingly.
36. Wellman missed almost two years of school as a result of the defendant's failure to accommodate his disability. The homebound instruction he received was highly inadequate. As a result, he was behind in all of his subjects and had to be tutored. As explained above, Wellman also suffered from severe and disabling anxiety which could have been avoided if the school district had complied with his multiple requests for accommodations.
37. Wellman has been diagnosed with anxiety disorder due to a medical condition. The symptoms of anxiety he experienced were disabling. There was a significant increase in anxiety symptoms in relation to attending school.

38. Wellman has also been diagnosed with cognitive disorder due to a medical condition. The symptoms include difficulty with concentration, focus, memory and information processing.

39. Wellman also attended the Total Learning Center for tutoring to make up for the deficiencies in his education over the almost two-year period in which he was on homebound instruction, and to help with the lingering symptoms of his concussion including problems with concentration, memory and information processing.

Causes of Action

COUNT I

Plaintiffs v. Butler Area School District – Violation of Section 504 of the Rehabilitation Act

40. All previous paragraphs are hereby incorporated by reference.

41. Wellman suffered from a disability related to his initial concussion.

42. In other words, the initial concussion that Wellman suffered became disabling. One or more major life activities were affected.

43. His mother asked the School District to make accommodations, including accommodations surrounding the academic schedule he was involved in, and when he attended the football game after suffering the first concussion, and accommodations she asked for accommodations from other requirements associated with being on the football team.

44. It was practice, unknown to Wellman at the time, that the football coach would ask injured players to handle the yardage and down markers on the sideline at football games.

45. However, in this respect, Wellman's mother had asked the coach that Wellman be given accommodations, but still be allowed to attend the game.

46. The coach refused to provide accommodations, and hence, exposed Wellman to further injuries and a subsequent concussion.

47. The danger of a subsequent concussion was, or should have been, foreseeable by the coach. Wellman should have been given accommodations, and should have not been asked to hold the down marker and yardage flag. As a result of not receiving this accommodation, Wellman suffered a second concussion and suffered severe and significant injuries stemming from that concussion.

48. The School District refused to make other accommodations for Wellman, which would have allowed him to return to school, which were requested by his doctors and his mother.

49. As a result Wellman was effectively excluded from school. He was placed on homebound education which was extremely inadequate, and eventually had to enroll in a private institution because of the refusal of the Butler Area School District to accommodate his needs. He suffered extreme anxiety from his treatment.

COUNT II

Plaintiffs v. Butler Area School District – Violation of Title II of the ADA

50. All previous paragraphs are hereby incorporated by reference.

51. Wellman suffered from a disability related to his concussion.

52. In other words, the initial concussion that Wellman suffered became disabling. One or more major life activities were affected.

53. His mother asked the School District to make accommodations, including accommodations surrounding the academic schedule he was involved in, and accommodations when he attended the football game after suffering the first concussion, and she asked for accommodations from other requirements associated with being on the football team.

54. It was practice, unknown to Wellman at the time, that the football coach would ask injured players to handle the yardage and down markers on the sideline at football games.

55. However, in this respect, Wellman's mother had asked the coach that Robert Wellman be given accommodations, but still be allowed to attend the game.

56. The coach refused to provide accommodations, and hence, exposed Wellman to further injuries and a subsequent concussion.

57. The danger of a subsequent concussion was, or should have been, foreseeable by the coach. Wellman should have been given accommodations and not be asked to hold the down marker and yardage flag. As a result of not receiving this accommodation, Wellman suffered a second concussion and suffered severe and significant injuries stemming from that concussion.

58. The School District refused to make other accommodations for Wellman, which would have allowed him to return to school, which were requested by his doctors and his mother.

59. As a result Wellman was effectively excluded from school and subject to discrimination based on his disability. He was placed on homebound education which was extremely inadequate, and eventually had to enroll in a

private institution because of the refusal of the Butler Area School District to accommodate his needs. He suffered extreme anxiety from his treatment.

COUNT III

Plaintiffs v. Butler Area School District and Dr. John Wyllie – Violation of the Civil Rights Act of 1871

60. All previous paragraphs are hereby incorporated by reference.

61. Wellman suffered from a disability related to his concussion.

62. The School District refused to accommodate Wellman's disability despite multiple requests from his mother and doctors to do so. Dr. Wyllie was contacted by Wellman's mother on multiple occasions, and also participated in meetings with Wellman and Wellman's doctors. In all of these instances, Dr. Wyllie was dismissive, derogatory, and abusive in the way he spoke to and treated Wellman. Wellman's increased anxiety with regard to Butler High School was a direct result of the way he was treated by Dr. Wyllie.

63. The School District has a special education department and provides specialized education to other students with diagnosed disabilities. They refuse to offer these services to Wellman because of the fact that he was injured at a school function. They also treated him differently because his disability – a concussion -- was not deemed worthy of recognition.

64. The School District, and specifically Dr. Wyllie's refusal to accommodate Wellman's disability, is a violation of equal protection. In other words, Dr. Wyllie treated Wellman differently because of the nature of his disability than other disabled children. First of all, Wyllie singled Wellman out and refused to offer him accommodations, because of the nature and source of his

injury, i.e., a concussion suffered at school, and, therefore, and treated Wellman differently than other students who suffered a disability.

65. Additionally, Wyllie's treatment of Wellman eventually became retaliatory in the sense that Dr. Wyllie was frustrated with and tired as a result of his interactions with Wellman's mother, who was simply attempting to enforce Wellman's rights under the ADA and the Vocational Rehabilitation Act. Wellman suffered extreme anxiety, embarrassment and humiliation as a result of this treatment.

Injuries

66. As a result of the failure of the District and Dr. Wyllie's to accommodate Wellman, Wellman suffered significant injuries. First, the failure to provide accommodations when he went to the football game resulted in his suffering a second concussion, with all of the attendant physical and emotions injuries associated with the concussion. Wellman was affectively excluded from school for two years. He was forced to accept homebound instruction which was highly inadequate. He also suffered extreme emotional distress and anxiety as a result of this conduct. He later enrolled in a private institution because of his severe anxiety related to the Butler Area School District and Dr. Wyllie.

Remedies

67. Wellman requests a trial by jury in this matter. He further requests that the Court enter judgment in his favor and against the defendants for the above-described injuries. He asks for all available remedies at law, including an

award of compensatory damages, punitive damages, attorney fees, costs and all other relief as is just and appropriate.

Respectfully submitted,

/s/Edward A. Olds
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