

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

S.G., by and through her parents and next friends, NELLY MENDEZ and RICARDO GOSSELAIN,

Plaintiff,

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THE DORAL ACADEMY, INC.,

Defendant.

Civil Case No.

COMPLAINT

1. S.G., a three-year-old little girl with diabetes, files this action to vindicate her rights under the Americans with Disabilities Act. The defendant, The Doral Academy, Inc., has ignored its obligations under federal law by refusing to provide S.G. with the reasonable accommodations she needs to enjoy full and equal access to preschool educational opportunities offered to other children. S.G., therefore, turns to this Court for relief.

PARTIES

2. Plaintiff S.G. is a three-year-old girl with a disability who resides in Doral, Florida. She brings this case by and through her parents and legal guardians Nelly Mendez and Ricardo Gosselain. Fed.R.Civ.P. 17(c).

3. S.G. has been diagnosed with type 1 diabetes, a physical impairment as that term is defined under the Americans with Disabilities Act. Type 1 diabetes is a chronic condition in which the pancreas produces little to no insulin, a hormone needed to allow glucose to enter cells to produce energy. As a result of her impairment, S.G. is substantially limited in the operation of her endocrine system, a major bodily function.

4. Defendant The Doral Academy, Inc., is a non-profit corporation registered under the authority of the Florida Department of State Division of Corporations. Upon information and belief, Plaintiff alleges that the defendant owns and operates Doral Academy's Pre-School / Prekindergarten Program, a private preschool located in Doral, Florida, on the grounds of Doral Academy Elementary School, a public charter school.

5. S.G. attends Doral Academy's Pre-School / Prekindergarten Program, which is open to children three and four years old.

6. Doral Academy's Pre-School / Prekindergarten Program is a place of public accommodation covered by Title III of the Americans with Disabilities Act ("ADA"). 42 U.S.C. § 12181(7)(J) and (K).

JURISDICTION AND VENUE

7. This is an action for declaratory and injunctive relief brought pursuant to Title III of the Americans with Disabilities Act ("ADA"). 42 U.S.C. § 12182 *et seq.*

8. Title III prohibits discrimination on the basis of disability in the access and enjoyment of public accommodations and commercial facilities, including nurseries, child care facilities, and other “place[s] of education.” 42 U.S.C. §§ 12181(7)(J) and (K).

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 for claims arising under the ADA.

10. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.

11. Venue is proper under 28 U.S.C. §1391(b), as a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Florida. The Plaintiff resides in the Southern District of Florida. The Defendant operates in the Southern District of Florida. All actions giving rise to the claim occurred in the Southern District of Florida.

STATEMENT OF FACTS

S.G.’s Diagnosis: Type 1 Diabetes

12. S.G. was diagnosed with type 1 diabetes at the age of 16 months. Diabetes affects a great number of children eligible for prekindergarten and preschool. The incidence of diabetes is on the rise.

13. Diabetes is a chronic disease characterized by high blood glucose levels (hyperglycemia) that result from either the failure of the pancreas to produce enough insulin (a hormone that is needed to convert glucose into energy required for daily life) or the failure of the body to effectively use whatever insulin

is produced. Individuals with diabetes are also at risk of having low blood glucose levels (hypoglycemia).

14. Type 1 diabetes is usually diagnosed in children and young adults, and results when the pancreas is unable to produce insulin. Those diagnosed with type 1 diabetes must receive insulin from an external source in order to survive.

15. Without insulin, cells cannot convert the glucose from ingested food into energy. As a result, glucose accumulates in the bloodstream, causing severe and possibly fatal consequences. Over time, complications can include blindness, kidney failure, heart disease, stroke, amputation, or loss of nerve sensation.

16. Insulin can be given either through a syringe, using an insulin pen (a device that delivers a predetermined amount of insulin stored in a cartridge) or an insulin pump (an electronic device that delivers programmed amounts of insulin through a tube inserted under the skin). Because maintaining tight control of blood glucose levels significantly lowers the risk of serious harm, including long-term complications, most children with type 1 diabetes today are treated with multiple (often 4 to 6) insulin administrations per day or with an insulin pump.

17. The blood glucose levels of children with diabetes must be monitored periodically throughout the day. Blood glucose levels may fluctuate based on food intake, physical activity, stress, illness, and other factors. Appropriate responses are needed to prevent serious illness or death. In the event of severely low blood glucose levels, which can be life-threatening, children with

diabetes also need someone who is able to administer glucagon, a hormone that is administered by injection in case of emergency.

18. Accommodations necessary to allow a child with diabetes equal access to a preschool program are not difficult, but the consequences of failing to accommodate can be life-threatening.

S.G.'s Need for Reasonable Accommodations

19. As a result of her type 1 diabetes, S.G. requires regular monitoring of her blood glucose levels and the administration of insulin.

20. S.G. wears a sophisticated sensor which measures her glucose levels just beneath the surface of the skin at regular, automated intervals of five minutes, and reports that information to a wireless monitor. S.G. also wears an insulin pump which provides a preset level of background (basal) insulin 24 hours a day and also allows for adjustment of glucose levels by the easy administration of insulin (bolusing) without injections.

21. S.G. is equipped with these devices throughout the preschool day, from approximately 8:30 A.M. to 2:30 P.M. Each day, S.G.'s parents also send a glucagon kit with her to be administered in the event of an emergency.

22. S.G.'s monitor is programmed to beep an alert if her glucose levels fall below 80 or rise above 270. If S.G.'s glucose level is too low, this is addressed by giving S.G. some juice or a snack. If S.G.'s glucose level is too high, her blood must be checked and that information entered into the pump to activate the pump to adjust the quantity of insulin to be administered.

23. After eating while at defendant's program, S.G.'s glucose levels will naturally go up. At snack time (9 A.M.), it is therefore necessary to calculate the number of carbohydrates S.G. will eat, and enter this information into the pump.

24. At lunch time (11 A.M.), it is necessary to check S.G.'s blood glucose before she eats, calculate the number of carbohydrates she will eat, and enter this information into the pump.

25. After eating, S.G.'s insulin intake must be adjusted if her glucose levels remain at or above 350 for more than two or three hours.

26. In case of an emergency, where blood glucose levels drop so low that S.G. would be unable to swallow or became unconscious, S.G. would need to receive an urgent injection of glucagon.

27. At three years old, S.G. is unable to perform these tasks on her own.

The Doral Academy Prekindergarten Program's Refusal to Accommodate

28. Doral Academy's Prekindergarten Program is a place of public accommodation. It is open to children ages three and four.

29. S.G.'s parents enrolled her in the program because of its reputation, its proximity to the family home, and with the hope to have S.G. and her older brother, six-year-old J.G., attend Doral Academy's schools through high school.

30. S.G.'s mother first notified the defendant that S.G. had diabetes in October 2013, when Ms. Mendez went to the school to fill out an application.

31. In February 2014, S.G.'s parents enrolled her in Doral Academy's Prekindergarten Program, to begin in August 2014, and paid a \$300 deposit.

32. In June 2014, Ms. Mendez called the school to enroll S.G. in summer camp. The administrator of the prekindergarten program, Patricia Berraondo, returned the call and recommended that S.G. not attend the summer camp. Ms. Berraondo stated that she preferred that S.G. join Doral Academy at the start of the regular school year instead, so that Ms. Mendez could train the teachers about S.G.'s diabetes needs and that they would then be better prepared to care for S.G. at summer camp the following year.

33. In July or August 2014, S.G.'s parents enrolled her brother, J.G., in first grade at The Doral Academy.

34. S.G.'s parents pay monthly tuition of \$735 for S.G. to attend Doral Academy's Prekindergarten Program from 8:30 A.M. to 2:30 P.M.

35. The prekindergarten term began on August 11, 2014. S.G.'s teacher is Gaby Ochoa. The teacher's assistant is Ms. Gladys (last name unknown). Another teacher comes into the classroom during lunch time while Ms. Ochoa takes lunch. The director of the prekindergarten program is Patricia Zulueta, who is also the daughter of Ms. Berraondo.

36. On or about August 9, 2014, S.G.'s parents met with staff of Doral Academy's Prekindergarten Program, including the three prekindergarten-4 teachers (for four year olds), one aftercare teacher, Ms. Zulueta, Ms. Ochoa and Ms. Gladys. The meeting was held after an open house at the preschool to discuss S.G.'s care. During the meeting, S.G.'s mother, Ms. Mendez, provided information about diabetes and the care that would be required during the school

day. Ms. Mendez offered to come to the school as long as necessary to show Ms. Ochoa what needed to be done. Ms. Ochoa agreed. Ms. Mendez also offered to train any other staff person who was interested.

37. On August 11, 12, 13, and 14, 2014, Ms. Mendez came to the school at lunch time to show Ms. Ochoa how to provide for S.G.'s care. On Monday, Ms. Mendez measured S.G.'s blood and showed Ms. Ochoa how to do that as well as enter the carbohydrate information. On Tuesday, Ms. Ochoa measured S.G.'s blood, and Ms. Mendez continued to show her about the carbohydrate counting. On Wednesday, Ms. Ochoa asked Ms. Mendez to measure S.G.'s blood again and that she would observe.

38. Each time Ms. Mendez came to the school for this purpose, she spent approximately 10 minutes with Ms. Ochoa. Ms. Ochoa also called Ms. Mendez during the school day when S.G.'s monitor alerted that her glucose levels were too low or too high, and Ms. Mendez explained how to address these situations.

39. At one point, Ms. Ochoa told Ms. Mendez that she did not feel comfortable counting the carbohydrates out of fear for liability. In response, Ms. Mendez signed a paper saying she would release Doral Academy from liability.

40. On August 14, 2014, Ms. Ochoa told Ms. Mendez that she was uncomfortable with these tasks and that she would need Ms. Mendez to continue doing them herself until they could discuss this with Ms. Berraondo.

41. At 10 P.M. that night, Ms. Berraondo called Ms. Mendez at home to request a meeting the next day, Friday, August 15, 2014.

42. The morning of August 15, 2014, Ms. Mendez and her husband met with Ms. Berraondo. At this meeting, Ms. Berraondo stated that Ms. Zulueta, her daughter, had complained that Ms. Ochoa did not have enough time to deal with S.G.'s special needs or to regularly call Ms. Mendez as she has 24 students to watch over.

43. Ms. Berraondo told S.G.'s parents about another mother with a child with diabetes who had decided not to enroll her child in Doral Academy's Prekindergarten Program, suggesting that Ms. Mendez should do the same and withdraw S.G. from the program.

44. Ms. Berraondo gave S.G.'s parents information on the Individuals with Disabilities Education Act, stating that they should enroll S.G. in a disabilities education program somewhere else which would be more suitable for S.G.'s needs.

45. Ms. Berraondo also advised S.G.'s parents that as Doral Academy's Prekindergarten Program is private and does not receive federal funding, it therefore did not have to abide by federal law, and that it was up to the school to decide whether to allow S.G. to remain in the program.

46. Ms. Berraondo offered S.G.'s parents two choices "as a favor": To withdraw S.G. from the program and receive a refund, or for Ms. Mendez to come

to the school herself every day at 11 A.M. to check S.G.'s blood, calculate the carbohydrates and enter information into the monitor.

47. After S.G.'s parents made clear that they intended to keep S.G. in the program, Ms. Berraondo called Ms. Ochoa in to join the meeting. Ms. Berraondo stated that S.G. could remain in the program on the condition that S.G.'s parents go to the school every day at 11 A.M. to provide for S.G.'s care.

48. S.G.'s parents advised Ms. Berraondo that they would not be able to come to the school every day as they work during the day. Ms. Berraondo offered to pay Ms. Mendez for two hours a day at \$10 / hour to attend to S.G., but this was not feasible in light of Ms. Mendez's work obligations.

49. S.G.'s parents offered to have S.G.'s grandfather, uncles or cousins come to the school instead, but Ms. Berraondo advised that the school "didn't let just anyone in" and that these family members would have to be fingerprinted and submit to a background check before they could come to the school.

50. Ms. Berraondo advised that Ms. Mendez and her husband would also have to be fingerprinted and submit to a background check if they were going to come to school every day to manage S.G.'s treatment. Ms. Berraondo further stated that S.G.'s father would be required to shave his beard and dress differently in order to go to the classroom or pick S.G. up from school.

51. Ms. Berraondo stated that the school would provide S.G. with a snack if her sugar was too low. If S.G.'s sugar was too high, however, or if S.G. fainted or experienced other serious symptoms, Ms. Berraondo stated that they

would call 911, but not administer the emergency injection at their disposal as provided by S.G.'s parents.

52. Since this meeting, The Doral Academy has refused to reasonably accommodate S.G.

53. As a result, for approximately two to three weeks thereafter, one of S.G.'s parents went to the school every day to measure her blood glucose levels and adjust her insulin intake. Their jobs, however, make ongoing daily appearances at the school impossible.

54. S.G.'s parents have subsequently had to try to monitor and manage S.G.'s glucose levels from afar, by pre-programming S.G.'s insulin pump based on her glucose levels the day before and her estimated carbohydrate intake the following day. This method, however, cannot take into account S.G.'s actual glucose levels, actual carbohydrate intake or actual insulin needs, which vary and require interaction with the monitor and pump.

55. On September 17, 2014, Ms. Ochoa advised Ms. Mendez by email that she was relieved now that "counting carbohydrates and supplying S.G. with insulin [was] out of her hands." Ms. Ochoa further stated that "the Pre-K policies" did not allow her to handle these responsibilities. Ms. Ochoa stated that she "cannot and will not" administer medication to S.G. because she is "not trained to do it" and her job is to "concentrate specifically on teaching" the 24 students. (Original in Spanish.)

56. Ms. Ochoa further stated:

We have never done it, even when we have had similar cases where the parents had to come in to administer the medication or where 911 had to be called.

(Original in Spanish.)

57. Ms. Ochoa stated that she was not “authorized to cooperate” with the requested accommodations. (Original in Spanish.)

58. As a result of The Doral Academy’s refusal to reasonably accommodate S.G., this young girl’s glucose levels have been consistently and unnecessarily high during the preschool day and consistently high at the end of the day when S.G. is picked up from school. A simple interaction with the monitor and pump, which The Doral Academy refuses to provide, quickly lowers S.G.’s glucose levels.

59. The Doral Academy’s refusal to reasonably accommodate S.G. puts her at unnecessary risk of acute symptoms and long-term complications.

CAUSE OF ACTION

Count One

Violation of Title III of the Americans with Disabilities Act
(42 U.S.C. § 12182 *et seq.*)

60. The foregoing allegations are repeated and incorporated as though fully set forth herein.

61. Title III of the ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of

the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. 42 U.S.C. § 12182(a).

62. Title III defines discrimination to include the failure of a public accommodation to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

63. Doral Academy's Pre-School / Prekindergarten Program is a place of public accommodation covered by Title III of the ADA. 42 U.S.C. § 12181(7)(J) and (K).

64. A covered entity must make reasonable modifications to its policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

65. Plaintiff S.G. is an individual with a disability within the meaning of the ADA.

66. Defendant The Doral Academy, Inc., has violated Title III of the ADA by failing to make reasonable modifications to its policies, practices or procedures and has thus denied Plaintiff S.G. full and equal access to its services, program, and activities. These violations are ongoing.

67. The Plaintiff is entitled to injunctive relief pursuant to 42 U.S.C. § 12188.

Count Two

Declaratory Judgment
(28 U.S.C. §§ 2201 and 2202)

68. The foregoing allegations are repeated and incorporated as though fully set forth herein.

69. An actual controversy has arisen and now exists between the parties in that Plaintiff contends, upon information and belief, that Defendant The Doral Academy, Inc., denies that it is subject to the requirements of the ADA.

70. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Declare that the Defendant is a place of public accommodation and subject to the requirements of Title III of the ADA;
- c. Declare that the Defendant is violating the law by failing to reasonably modify its policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to the Plaintiff, a person with a disability;

d. Enjoin Defendant and its employees, agents, and any and all other persons acting on Defendant's behalf or under Defendant's control from violating the ADA by refusing to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford full and equal access to its services, programs and facilities to children with disabilities;

e. Award Plaintiff reasonable attorneys' fees and costs, as authorized by 42 U.S.C. § 12188; and

f. Grant such other relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED, this 26th day of September, 2014,

SOUTHERN POVERTY LAW CENTER

By: /s/ Tania Galloni
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