

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

St. Joan Antida High School, Inc.
1341 North Cass St.
Milwaukee, WI 53202,

Plaintiff,

v.

Case No. 17-CV-

Milwaukee Public School District
5225 W. Vliet St.
Milwaukee, WI 53208,

Defendant.

COMPLAINT

The Plaintiff, St. Joan Antida High School, Inc. (“St. Joan Antida”) by its attorneys, Wisconsin Institute for Law & Liberty, alleges as follows:

1. This case involves the transportation of school children who live within the Milwaukee Public School District (“MPS”).
2. Prior to 1967, children who attended private schools were not entitled to public transportation to their schools. This created health and safety hazards for these children that were resolved by an amendment to the Wisconsin Constitution.
3. In 1967, the people of Wisconsin amended the Constitution to provide that “Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.” *See* Wisconsin Constitution, Art. 1, § 23.
4. The amendment to the Constitution was then followed by legislation that required such transportation to be provided by the school districts in which these children live. Specifically, the legislature decided to provide for the transportation of children to parochial and other private schools by amending the existing statutes for public school transportation so as to provide for transportation for students attending private or parochial schools and to mandate that such students be transported on a reasonably uniform basis with public school students. This

enabling legislation was created by chapters 68 and 313, Laws of 1967. *Cartwright v. Sharpe*, 40 Wis. 2d 494, 501, 162 N.W.2d 5, 8 (1968).

5. What the constitutional amendment and the enabling legislation accomplished was to provide that the same consideration of safety and welfare should apply to public and private students alike. *Cartwright v. Sharpe*, 40 Wis. 2d at 506.

6. The enabling legislation remains in effect (although it has been amended from time to time) and is contained in Wis. Stat. §121.54.

7. Currently, under *inter alia* Wis. Stat. §121.54(1)(b), MPS must treat private school students and public school students with reasonable uniformity when it comes to transportation.

8. Further, the Fourteenth Amendment to the United States Constitution states that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

9. If MPS fails to provide transportation to students attending private religious schools on the same basis that it provides such transportation to students attending public schools, then MPS is denying the students at such private religious schools their right to equal protection of the laws.

10. Despite the requirement of §121.54 and despite its obligations to provide private school students similarly situated to public school students with equal protection under the law, MPS treats students who attend St. Joan Antida High School (a private religious school within the City of Milwaukee) differently than it does similarly situated students who attend public schools.

11. Thus, MPS has taken it upon itself to deny these students equal protection under the law and to subject these students to the health and safety risks that the 1967 amendment to the Wisconsin Constitution and §121.54 were designed to prevent.

PARTIES

12. St. Joan Antida is an independent private religious female-only high school in the Milwaukee Parental Choice Program operating at 1341 N. Cass Street, Milwaukee, Wisconsin with a city wide attendance area. St. Joan Antida asserts this claim on its own behalf and as the

assignee of parents and students who have been adversely affected by the conduct of the Milwaukee Public School District as described more specifically below.

13. The Defendant Milwaukee Public School District (“MPS”) is a “school district” as that term is used in Chapters 115 through 121 of the Wisconsin Statutes. MPS has its central offices and principle place of business at 5225 W. Vliet St., Milwaukee WI 53208.

JURISDICTION AND VENUE

14. This case is brought under 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

15. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 because this action arises under the Fourteenth Amendment to the United States Constitution. This Court also has supplemental jurisdiction of the state law claim set forth in the second claim for relief.

16. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

FIRST CLAIM FOR RELIEF

(Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution)

17. The Plaintiff realleges and incorporates by reference the allegations in the foregoing paragraphs.

18. Wis. Stat. §121.54(2)(a) provides that school districts must provide transportation to all children attending public school who reside more than two miles from the public school they are entitled to attend.

19. Wis. Stat. §121.54(2)(b) provides that public school districts must provide transportation to children who live in the district and attend private school, so long as the private school is within the district (or not more than 5 miles from the district boundaries), the child lives more than 2 miles from the private school, and the child lives within the private school’s attendance area.

20. Wis. Stat. §121.54(1) has an exception to both Section 121.54(2)(a) and (2)(b) referred to as the “City Option.” In certain cases, students who live within a city are not entitled to transportation from the school district to either public school or private school because of the existence of public bus transportation.

21. However, under *inter alia* Section 121.54(1)(b), if a school district that is not obligated to provide transportation because of the City Option elects to do so, then “*there shall be reasonable uniformity, in the transportation furnished to the pupils, whether they attend public schools or private schools.*”

22. There is no formal action that a school district must take to exercise the “City Option,” but MPS has done so. *Deutsch v. Teel*, 400 F. Supp. 598, 601 (E.D. Wis. 1975) (“A review of the transportation policy for Milwaukee public schools reveals that the Board of School Directors has utilized the ‘city option’ statute in allocating school bus service”).

23. Because MPS is acting under the City Option it can determine its own transportation policies, but under Section 121.54(1)(b) it must provide transportation with *reasonable uniformity* to students in public and private schools.

24. The MPS transportation policies are set forth in MPS Administrative Policy 4.04 (a copy of which is attached hereto as Exhibit A).

25. With respect to students in both public and private high schools, MPS Policy 4.04 states that they will only receive transportation from MPS if they live more than two miles from school **and** more than one mile walking distance from public transportation.

26. However, MPS Policy 4.04(5)(a)2 has an exception to the above for “City-Wide Schools.” According to the exception, “Transportation service shall be provided to the public secondary school students whose residences are more than two miles or more walking distance from assigned city-wide schools.” Under the exception, the requirement that the student live more than one mile from public transportation is eliminated.

27. So long as the student resides more than two miles from the public city-wide high school they attend, under MPS Policy 4.04(5)(a)(2), MPS provides transportation to its students to their city-wide public schools without regard to the race of the student and without regard to the racial composition of the attendance area in which they reside.

28. For example, Golda Meir High School is a public city-wide high school located at 1555 M.L.K. Drive, Milwaukee, WI. MPS will provide transportation to all students who attend Golda Meir High School who live more than 2 miles from the school without regard to where in the City they live and without regard to their race.

29. St. Joan Antida is less than a mile from Golda Meir High School and also has a city-wide attendance area, but MPS treats students at St. Joan Antida differently than students at Golda Meir. MPS provides no transportation for any student at St. Joan Antida.

30. St. Joan Antida currently has an enrollment of 143 students, at least 70 of whom have residences that are more than two miles walking distance from St. Joan Antida and, as a

result, are similarly situated to public school students who are provided with transportation from MPS to public schools with city wide attendance areas.

31. These 70 students are entitled to transportation from MPS either under §121.54(2)(b) or, alternatively, under §121.54(1)(b), assuming that MPS is operating under the City Option. But even absent these statutory provisions, these students would be entitled to transportation under the Equal Protection Clause because they are similarly situated to public students who are being provided transportation.

32. However, MPS has willfully or negligently failed to provide transportation for any of these 70 students. These students will be referred to herein as the 70 students denied transportation by MPS.

33. On November 16, 2016, St. Joan Antida sent a Notice of Claim to MPS arising out of the facts that underlie this complaint. A roster of the 70 students who attend St. Joan Antida and who are entitled to transportation by MPS was attached to the Notice of Claim. The roster is not being attached hereto in accordance with state and federal laws on pupil confidentiality but because the roster was attached to the Notice of Claim MPS knows the identity and addresses of these 70 students.

34. Because of MPS's failure to perform its obligations as required by law, St. Joan Antida is harmed in at least two ways. First, it is harder for St. Joan Antida to recruit students because of the difficulties caused by MPS's failure to provide transportation. This results in St. Joan Antida having fewer students than it would have if MPS met its legal obligations. Second, St. Joan Antida partially makes up for MPS's failure to provide transportation to its students by providing such transportation on its own. For example, St. Joan Antida is providing such transportation to the 70 students denied transportation by MPS at a cost to St. Joan Antida of \$108,200 for the 2016-2017 school year.

35. Students and their families are harmed by MPS's failure to meet its legal obligations because part of the money they pay in tuition must be used to provide transportation rather than for other educational programming and because the transportation provided by St. Joan Antida, in many cases, is less efficient and less convenient than transportation that would be provided by MPS, if MPS was meeting its legal obligations.

36. Students and their families are also harmed because they are being denied a benefit that MPS is legally obligated to provide with the harm being measured, at least in one

way, by the cost of substitute services which in this case was \$108,200 for the 2016-2017 school year.

37. As consideration for receiving transportation from St. Joan Antida, the parents of each of the 70 students denied transportation by MPS have given an assignment of their transportation rights and benefits to St. Joan Antida.

38. Although St. Joan Antida has asked MPS to provide a written explanation as to why MPS is not providing transportation for the 70 students denied transportation by MPS, MPS has not done so.

39. The Fourteenth Amendment's equal protection guarantee provides a right to be free from invidious discrimination in statutory classifications as well as governmental activity.

40. Violations of the Fourteenth Amendment's equal protection clause are enforceable under 42 U.S.C. § 1983 which provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

41. MPS acted under color of law in depriving the 70 students attending a private religious school of their right to equal protection under the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

42. Upon information and belief, MPS has adopted policies (including but not limited to MPS Policy 4.04) and acted according to those policies in denying students who attend a private religious school of equal access to transportation.

43. In addition, upon information and belief, MPS has adopted a wide-spread practice of denying students who attend a private religious school of equal access to transportation that is so permanent and well-settled as to constitute a custom or usage with the force of law.

44. By discriminating against these students who attend a private religious school, MPS is violating their rights to Equal Protection under the U.S. Constitution.

45. The 70 students denied transportation by MPS and their families along with St. Joan Antida have suffered harm as a result of the denial of transportation by MPS.

46. Under Section 1983, the remedies for such a violation include those contained in 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF
(Violation of Wis. Stat. §121.54)

47. The Plaintiff realleges and incorporates by reference the allegations in the foregoing paragraphs.

48. By discriminating against the 70 students denied transportation by MPS because these students attend a private religious school, MPS is violating its statutory obligation to treat them with reasonable uniformity with public school students as required by Wis. Stat. §121.54(1)(b).

49. The 70 students denied transportation by MPS and their families along with St. Joan Antida have suffered harm as a result of the denial of transportation by MPS.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully request this Court grant the following relief:

- A. A declaratory judgment stating that MPS violated Wis. Stat. §121.54 and 42 U.S.C. § 1983 by refusing to transport the 70 students to Saint Joan Antida;
- B. An injunction prohibiting MPS from discriminating against students who attend private religious schools with respect to transportation benefits;
- C. Damages as determined by the trier of fact;
- D. Costs and attorneys' fees, including attorneys' fees under 42 U.S.C. § 1988; and
- E. Such other and further relief as the Courts deems appropriate.

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Date: 3/21/2017

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