

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

**BRANDY MADDEN, individually and)
and as natural mother and next friend)
of C.T., a minor child,)
)
Plaintiff,)
)
v.)
)
HAMILTON COUNTY)
DEPARTMENT OF EDUCATION,)
)
Defendant.)**

Case No. 1:13-cv-00377

AMENDED ANSWER

NOW COMES the Hamilton County Department of Education, by and through counsel, and, for answer to the Plaintiff’s Complaint alleging violation of 42 U.S.C. §1983, pleads as follows:

FIRST DEFENSE

The Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

With respect to the specifically enumerated paragraphs of the Plaintiff’s Complaint, this Defendant avers as follows:

1. Upon information and belief, this Defendant admits these allegations.
2. This Defendant admits that it is a local education agency existing pursuant to the laws of the State of Tennessee for the purpose of providing a public school system in and for Hamilton County.

3. This Defendant admits only that this Court is the appropriate venue for this action.
4. This Defendant admits only that this Court has jurisdiction of this matter.
5. This Defendant admits these allegations.
6. This Defendant admits these allegations.
7. This Defendant denies these allegations.
8. This Defendant denies these allegations.
9. This Defendant admits these allegations.
10. This Defendant admits these allegations but avers that the child is functionally non-verbal.
11. This Defendant denies these allegations as stated and avers that on or about November 12, 2012, school officials found a herpes blister on the child's foot and, pursuant to the written instructions of the child's pediatrician, notified the Plaintiff that the child needed to go home.
12. This Defendant denies these allegations as stated and avers that school officials asked for information from the child's pediatrician regarding the nature of her condition.
13. This Defendant denies the implied assertion that the Plaintiff responded immediately to inquiries regarding the child's medical condition. This Defendant admits that school officials received a letter from Dr. Huff dated November 13, 2012, the text of which speaks for itself, and avers that Dr. Huff provided this information following inquiries by this Defendant's own medical review officer, Dr. Stephen Adams.
14. This Defendant denies these allegations.
15. This Defendant denies these allegations.
16. This Defendant denies these allegations.

17. This Defendant admits these allegations.

18. This Defendant denies these allegations.

19. This Defendant denies that school officials ever informed the Plaintiff that they had searched the child as described.

20. This Defendant admits these allegations but denies their materiality inasmuch as school officials had never searched the child as described.

21. This Defendant denies that school officials had ever searched the child as described.

22. This Defendant denies that school officials had ever searched the child as described.

23. This Defendant admits these allegations but denies their materiality inasmuch as school officials had never searched the child as described.

24. This Defendant denies that school officials ever searched the child as described but avers that school officials did inspect the child for rashes or blisters incidental to routine dressing, undressing, and diapering pursuant to this child's individual education plan. School officials began performing these inspections on or about November 7, 2012, pursuant to advice from this child's own pediatrician and this Defendant's medical review officer after a classroom teacher was diagnosed with ocular herpes on or about October 30, 2012.

25. This Defendant denies that any of its employees are guilty of any so-called illegal activities and further denies that any of its actions are the proximate cause of the Plaintiff having to take time off from work or losing her employment.

26. This Defendant admits that its employees knew that the child had congenital herpes but denies the remaining allegations of this paragraph of the Plaintiff's Complaint.

27. This Defendant generally admits these allegations but denies their materiality.
28. This Defendant denies these allegations.
29. This Defendant denies these allegations.
30. This Defendant denies it or its employees violated any rights of the child or breached any legal duty owed to her.
31. This Defendant denies these allegations.
32. This Defendant denies it or its employees violated any rights of the child or breached any legal duty owed to her.
33. This Defendant denies these allegations.
34. This Defendant denies these allegations.
35. This Defendant denies these allegations and specifically denies that that it or its employees are guilty of any wrongdoing.
36. This Defendant denies these allegations.

THIRD DEFENSE

This Defendant denies that the Plaintiff is entitled to any of the relief requested.

FOURTH DEFENSE

With respect to any injuries or damages the Plaintiff asserts that she and the child have suffered as a result of the actions described in this Complaint, this Defendant denies that it is the proximate cause of any such injuries or damages and demands strict proof to the contrary.

FIFTH DEFENSE

This Defendant denies that the Plaintiff provided school officials with adequate or timely information concerning the child's health condition as a result of which they reasonably relied upon the medical advice of the school system's medical review officer and the written instructions of the child's pediatrician.

SIXTH DEFENSE

This Defendant denies that any of its employees strip-searched the child and demands strict proof to the contrary.

SEVENTH DEFENSE

This Defendant denies that it or its employees have violated any legal duty owed to the Plaintiff or to the child.

EIGHTH DEFENSE

This Defendant avers that the child was, at all times material to the Complaint, unable to self-toilet and was therefore dependent upon school officials to change her diaper. In view of the child's dependence upon regular diaper changing by school officials, this Defendant avers that this child had a diminished expectation of privacy such that any routine examination that school officials may have conducted during the course of routine diaper changing would not have violated any clearly established rights of the child under the Fourth Amendment to the United States Constitution or under any other theory of law.

NINTH DEFENSE

This Defendant avers that school officials had reasonable grounds under the circumstances to conduct limited examinations of the child incidental to routinely dressing, undressing, and diapering her such that they did not violate the child's rights under the Fourth

Amendment to the United States Constitution. In particular, this Defendant avers that the Plaintiff had withheld information regarding the child's diagnosis of congenital herpes and how to accommodate it. Nevertheless, this Defendant learned from the child's pediatrician that the child needed to be sent home when she presented with rashes on the lower extremities.

On October 30, 2012, this Defendant learned that a classroom teacher had been diagnosed with ocular herpes; a few weeks earlier, this teacher had been holding and comforting the child who was sick and feverish. School officials attempted to determine whether any additional precautions were necessary to serve the child, but the pediatrician did not immediately respond to the school system's inquiries.

On November 1, 2012, Dr. Stephen Adams, this Defendant's medical review officer, advised school officials to conduct examinations incidental to routine dressing, undressing and diapering of the child in view of the pediatrician's instructions to send the child home if she presented with a rash on the lower extremities. The school nurse conducted four such examinations between November 7 and November 12, 2012. The nurse ceased these examinations when Dr. Huff, the child's infectious disease specialist, responded to Dr. Adams' inquiry and advised that the child was not contagious if her blisters were covered.

This Defendant learned weeks later that the teacher in question had been misdiagnosed with ocular herpes.

TENTH DEFENSE

With respect to any allegations contained in the Plaintiff's Complaint not previously admitted, explained or denied, this Defendant now denies the same and demands strict proof.

WHEREFORE, PREMISES CONSIDERED, the Hamilton County Department of Education prays this Court to dismiss this action, taxing costs accordingly.

Respectfully submitted,

LEITNER, WILLIAMS, DOOLEY & NAPOLITAN, PLLC

BY: /s/ D. Scott Bennett
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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2013, I electronically filed a Notice of Filing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record and mailed a copy by U.S. Postage to parties not on the CM/ECF system:

Valerie W. Epstein, Esq.
BPR #013785
720 Cherry Street
Chattanooga, TN 37402

This the 4th day of December, 2013.

By: /s/ D. Scott Bennett
D. SCOTT BENNETT (TN BPR #015988)