

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**CHERYL FRIES, AS MOTHER AND  
NEXT FRIEND OF A MINOR,  
Plaintiff**

**v.**

**EANES INDEPENDENT SCHOOL  
DISTRICT,  
Defendant**

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**CIVIL ACTION NO. \_\_\_\_\_**

**CLASS ACTION COMPLAINT OF  
DISABILITY ACCOMMODATIONS  
DISCRIMINATION**

**EFS**

**ORIGINAL COMPLAINT - CLASS ACTION**

**INTRODUCTION**

1. This action arises under Title II of the Americans with Disabilities Act,<sup>1</sup> the Rehabilitation Act of 1973, as amended,<sup>2</sup> the Texas Architectural Barrier Act<sup>3</sup>, and the Texas Human Resources Code,<sup>4</sup> and state common law claims. Claire Fries (“Claire”) is a minor and an individual with a mobility impairment disability attending Eanes Elementary School (“Eanes”) in the Eanes Independent School District (“EISD”). Cheryl Fries, mother and Applicant in the above-referenced and styled cause and acting on behalf of her minor child Claire (collectively “Plaintiff”), brings these claims for violations of Claire’s civil rights, as well as personal injury claims, against EISD for failure to design, construct and/or operate facilities, to wit: Eanes and other schools and school facilities within EISD, in compliance with the state and federal accessibility requirements of the

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<sup>1</sup>42 U.S.C. § 12101 *et seq.*, (the “ADA”).

<sup>2</sup>29 U.S.C. §794 and §794a (the “Rehabilitation Act” or “§ 504”).

<sup>3</sup> Texas Revised Civil Statutes, Article 9102 *et seq.*, (the “TABA”). The TABA was re-codified as the Texas Government Code at Chapter 469 September 1, 2003.

<sup>4</sup>TEX. HUM. RES. CODE § 121.001 *et seq.* (the “THRC”).

ADA, the Rehabilitation Act, and the TABA, thus violating her rights under THRC.<sup>5</sup>

2. Plaintiff further brings these claims because, by reason of her disability, Claire and the members of the PROPOSED CLASS are being excluded from participation in or being denied the benefits of the services, programs, or activities of and/or being subjected to discrimination at the EISD. She seeks damages for past and future medical expenses, past and future physical pain and suffering, past and future physical impairment, disfigurement, and other incurred out-of-pocket expenses, plus prejudgment interest.

3. Plaintiff seeks a preliminary and permanent injunction to enjoin EISD from engaging in these unlawful practices and seeks the removal of architectural barriers that discriminate against individuals with mobility impairment disabilities. Further, Plaintiff seek declaratory relief for Claire and for each member of the PROPOSED CLASS for violation of their civil rights, along with their attorney's fees and the costs of litigation.

### **JURISDICTION**

4. This Court has jurisdiction over federal claims pursuant to 28 U.S.C. §1331 and 42 U.S.C. §12188, and supplemental jurisdiction over various state claims pursuant to 28 U.S.C. §1367.

### **BACKGROUND AND OPERATIVE LEGAL STANDARDS**

5. On July 26, 1990, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, the most comprehensive civil rights advancement for persons with disabilities ever to be enacted by the United States Congress, was signed into law. The Preamble of the ADA states its purpose.

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<sup>5</sup>On Sept.1, 2003 Art 9102 was changed to Chapter 469. References to Art 9102 in the THRC §121.003 have not been updated to reflect the change. The revisor's note, however, at the end of Chapter 469 makes it clear that statutory references to Art. 9102 now mean Chapter 469. Specifically "Sec. 8. All references in law to the former architectural barriers statute, Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), mean this article."

“An Act: To establish a clear and comprehensive prohibition of discrimination on the basis of disability.”

6. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>6</sup>

7. Congress provided that, “Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle.”<sup>7</sup> Acting on this authority, the Department of Justice developed implementing regulations – the Americans with Disabilities Act Accessibility Guidelines.<sup>8</sup>

8. When proscribing discrimination in Title II of the ADA on the basis of disability by public entities,<sup>9</sup> Congress included any “other instrumentality of ...States or local government”<sup>10</sup> in its definition of “entity”. The prohibition against discrimination therefore applies to anything a public entity does, even if carried out by private contractors.<sup>11</sup>

9. The Rehabilitation Act provides “No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>12</sup>

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<sup>6</sup>42 U.S.C. §12132.

<sup>7</sup>42 U.S.C. §12134(a).

<sup>8</sup>28 C.F.R. Part 36, Appendix A (the “ADAAG”).

<sup>9</sup>42 U.S.C. § 12132.

<sup>10</sup>42 U.S.C. § 12115(1)(B).

<sup>11</sup>See 28 C.F.R. § 35.102 (“All governmental activities of public entities are covered, even if they are carried out by contractors.”)

<sup>12</sup>29 U.S.C. §794.

10. Under § 504 of the Rehabilitation Act, “the term ‘program or activity’ means all of the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government.”<sup>13</sup>

11. Discrimination under § 504 is essentially the same as discrimination under Title II of the ADA, applicable to a state agency or program, with the additional requirement that the program or activity of the state agency receive Federal financial assistance.<sup>14</sup> Section 505 of the Rehabilitation Act incorporates the remedies, rights, and procedures set forth in Title VI of the Civil Rights Act of 1964 for violations of § 504.<sup>15</sup>

12. Federal regulations under §504 require that each facility or part of a facility constructed by, on behalf of, or for the use of a recipient of federal financial assistance shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after May 9, 1980.<sup>16</sup>

13. Federal regulations under title II of the ADA require that every part of a facility constructed on behalf of or for the use of a public entity after January 26, 1992 must be readily accessible to and usable by individuals with disabilities.<sup>17</sup>

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<sup>13</sup>34 U.S.C. § 104.3(k)(1)(I).

<sup>14</sup>*Pace v. Bogalusa City School Bd.*, 403 F.3d 272, 287 (5th Cir. 2005).; *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000) (“language of Title II generally tracks the language of Section 504 . . . and Congress’ intent was that Title II . . . work in the same manner as Section 504”); see also 42 U.S.C. § 12133 (the “remedies, procedures, and rights” of Title II of the ADA are the same as those set forth in the Rehabilitation Act).

<sup>15</sup>29 U.S.C. § 794a(a)(2).

<sup>16</sup>34 C.F.R. § 104.23(a); as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 C.F.R. subpart 101.19.6) is deemed to comply with the requirements of this section with respect to those buildings. 34 C.F.R. 104.23(c).

<sup>17</sup>28 C.F.R. § 35.151(a) “Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.”

14. Federal regulations under §504 require that where structural changes in existing facilities are necessary to make these facilities accessible, such changes shall be made on or before May 9, 1983.<sup>18</sup>

15. In an effort to prevent discrimination against persons with disabilities, Texas passed the Texas Architectural Barrier Act, stating, “The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of persons with disabilities and to eliminate, insofar as possible, unnecessary barriers encountered by persons with disabilities, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted.”<sup>19</sup>

16. The intent of the TABA was to make all buildings and facilities covered by the act accessible to, and functional for, persons with disabilities to, through, and within their doors.<sup>20</sup> The TABA specifically applies to “disabilities of coordination, and aging.”<sup>21</sup>

17. The Texas Accessibility Standards,<sup>22</sup> adopted December 17, 1993 by the Texas Department of Licensing and Regulation (“TDLR”) under Texas Civil Statutes Art. 9102<sup>23</sup> apply to any “building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state,”<sup>24</sup> and specifically includes any “building or facility described by

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<sup>18</sup>34 C.F.R. § 104.22(d).

<sup>19</sup>Tex. Civ. Stat. Art. 9102 sec. 1 (now re-codified as TEX. GOV'T. CODE §469.001( c).

<sup>20</sup>TEX. GOV'T. CODE §469.001(a)

<sup>21</sup>TEX. GOV'T. CODE §469.001(b).

<sup>22</sup>16 TEX. AMIN. CODE, § 68 (1994) Tex. Dept. Lic. & Reg. (the “TAS”).

<sup>23</sup>Effective April 1, 1994. Now re-codified as TEX. GOV'T. CODE §469.052.

<sup>24</sup>TEX. GOV'T. CODE § 469.003(a)(1).

this subsection or Subsection (b) that is constructed on a temporary or emergency basis.”<sup>25</sup>

18. On September 23, 1996 the US Department of Justice issued certification that the Texas Accessibility Standards, the Texas Architectural Barriers Act and the Architectural Barriers Administrative Rules, meet or exceed the new construction and alterations requirements of the Americans with Disabilities Act. The ADAAG and TAS are essentially the same, with some additional requirements in the Texas standards (shown in italics when reading TAS).

19. The TABA requires that all plans and specifications for construction or for the substantial renovation, modification, or alteration of a subject building or facility that has an estimated construction cost of \$50,000 or more shall be submitted to the TDLR for review and approval.<sup>26</sup>

### **PARTIES**

20. Cheryl Fries, Applicant herein,<sup>27</sup> is an individual whose address is 5002 Gregory Place, Austin, Texas 78746. This cause of action is brought by her on behalf by her adopted daughter, Claire. At all times relevant hereto Claire has been an “individual with a disability” within the meaning of the ADA,<sup>28</sup> a “qualified individual with a disability” within the meaning of Title II of the ADA,<sup>29</sup> an “otherwise qualified individual with a disability” within the meaning of § 504,<sup>30</sup> and a “person with a disability” as defined by THRC,<sup>31</sup> in that she has a physical impairment that

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<sup>25</sup>TEX. GOV'T. CODE § 469.003(a)(2); ADAAG and TAS §4.1.1(4)(specifically including temporary classrooms).

<sup>26</sup>TEX. GOV'T. CODE §469.101.

<sup>27</sup>As used herein, "Plaintiff" shall include not only named Plaintiff, but also persons whose claims are being represented by a Plaintiff or persons from whose injuries the Plaintiff's claims are derived.

<sup>28</sup> 42 U.S.C. §12102(2).

<sup>29</sup>42 U.S.C. §12131(2).

<sup>30</sup>29 U.S.C. §705(20).

<sup>31</sup>TEX. HUM. RES. CODE §121.002(4).

substantially limits one or more of her major life activities.

21. Defendant the Eanes Independent School District is an agency of the State of Texas that conducts programs or activities receiving Federal financial assistance as defined by § 504,<sup>32</sup> and a public entity as defined by Title II of the ADA.<sup>33</sup>

22. Since 1973 school districts of the State of Texas have accepted federal funding on the condition that they do not discriminate on the basis of disability in providing access to their benefits and programs. As such, EISD is required to follow the requisites of the ADA and § 504.

23. EISD may be served by serving its president, James A. Strickland, Jr.

### **CLASS ALLEGATIONS**

24. Plaintiffs seek to maintain this action as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure. The proposed class would consist of all persons who have a severe difficulty walking or climbing stairs, and/or who use wheelchairs, walkers, crutches a cane or scooters for mobility, and who would therefore be considered disabled under the ADA and Rehabilitation Act and persons with a disability under Texas law, who could bring suit against the Defendants for accommodation discrimination at EISD schools under the ADA, the Rehabilitation Act, and/or the THRC (including children who are students at the school and disabled parents, teachers, and elderly who attend school functions and events, hereinafter, the “PROPOSED CLASS”).

25. The PROPOSED CLASS is believed to consist of well over 100 members, and joinder of all of such members in this lawsuit is impracticable.

26. There are numerous questions of law and fact common to the PROPOSED CLASS including,

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<sup>32</sup>29 U.S.C. §794.

<sup>33</sup>42 U.S.C. §12131(1)(B).

though not limited to, the following:

- a. Whether EISD is a public entity under the ADA;
- b. Whether EISD is a agency of the State of Texas that conducts programs or activities receiving Federal financial assistance;
- c. Whether EISD schools have engaged in new construction that are in violation of the TAS;
- d. Whether EISD schools are in violation of the ADA Accessibility Guidelines;
- e. Whether EISD discriminates on the basis of disability in providing access to their benefits and programs;
- f. Whether Defendants were required, by §504, the ADA, or the TABA to design and construct and or to maintain an accessible route or routes within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones and public streets or sidewalks, to an accessible building entrance or entrances;
- g. Whether EISD has violated the Rehabilitation Act;
- h. Whether EISD has failed to comply with the TABA;

27. Plaintiffs' claims are typical of the claims of the members of the PROPOSED CLASS. Claire, like other members of the PROPOSED CLASS, has mobility impairments. Her impairments are, for the most part, equal to or worse than the impairments of the unnamed members of the PROPOSED CLASS. Further, the named Plaintiffs' claim that the Defendants have violated named Plaintiffs' civil rights by, among other things, failing to design, construct, operate and or maintain EISD in a manner consistent with both state and federal law and the rules and standards promulgated thereunder, and that this failure is a violation of her civil rights and those of all members of the PROPOSED CLASS.

28. Plaintiffs will fairly and adequately protect the interests of the PROPOSED CLASS. They are familiar with the requirements of the ADA, the Rehabilitation Act, and the TABA and are committed to ensuring access for people with mobility impairments through enforcement of these

civil rights provisions. Plaintiffs have no interest that conflicts in any way with the interests of the PROPOSED CLASS.

29. In addition, Plaintiffs have retained counsel with extensive experience in litigation, including class action litigation. Plaintiffs' counsel Kenneth Carden has personally handled more than 100 ADA and/or Rehabilitation Act claims in Federal Court for similar violations, and he devotes his entire practice to disability law. He is thoroughly familiar with issues concerning people with mobility impairments, because he is a paraplegic and has used a wheelchair since the age of 22. Finally, Mr. Carden has been approved in federal courts as class counsel for the disabled individuals of Texas on four previous cases involving facts similar to the present case. He is licensed to practice before all Texas State and Federal Courts, all courts of the State of Illinois, the Fifth Circuit Court of Appeals, and the United States Supreme Court.

30. Plaintiffs' counsel Martin Cirkiel devotes a substantial part of his practice to dealing with the rights of persons with a disability, including and especially children in the school environment. In special education law, he and his firm have represented hundreds of children (and their families) across the State of Texas. Mr. Cirkiel is approved for practice before all the Texas State and Federal Courts, the Fifth Circuit Court of Appeals, and the United States Supreme Court, where he has litigated other issues relative to disability concerns.

31. This action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendants' violations of the ADA, §504, and the TABA are applicable to all members of the PROPOSED CLASS. Therefore, an injunction requiring compliance with the ADA Accessibility Guidelines and the Texas Accessibility Standards is appropriate.

### **FACTS**

32. Claire has been diagnosed with a rare congenital neuromigrational defect called bilateral

closed-lip schizencephaly. This disease causes a neuromuscular disability resulting in decreased gross and fine motor and visual processing function and lack of balance reactions. She requires a walker, and sometimes a wheelchair, for ambulation. Visual problems include nystagmus and esotropia and visual processing due to cerebral-optical defect.

33. Claire is ten years old and was enrolled in the Eanes Elementary School Preschool Program for Children with Disabilities in 2002 when she was four years old. She has attended Eanes Elementary School for six years.

34. Claire has no intellectual or behavioral impairment, and learns normally. With minimal motorical assistance and minor accommodations for vision, she is successful in fully mainstreamed classes and maintains average to high grades.

35. At each school within the EISD there are significant architectural barriers that are dangerous to students and others with mobility impairments and that impair the education process by these children.

36. These barriers range from ramps with inaccessible slopes and no edge protection, no hand rails on ramps, no accessible routes between buildings on the same campus, no accessible bathrooms, inaccessible classrooms, inaccessible stages, insufficient and improperly designed and placed and insufficient “designated accessible parking,” and inaccessible playgrounds and sport fields with no accessible route.

37. Cheryl Fries began asking for improved ADA compliance at Eanes in 2002 when she enrolled her daughter. She was repeatedly told it would be a high priority in “the next bond.”

38. Cheryl Fries and other parents of students with disabilities have repeatedly brought the accessibility problems that their children face to members of EISD’s School Board, and the Board is fully aware that there are multiple architectural barriers at EISD facilities.

39. Since the year 2000 EISD has had in its possession a document entitled “EANES Independent School District Facilities Assessment” that identified “problems with architectural items such as life safety and ADA Codes.”

40. Since at least since January 21, 2003 EISD has had in its possession a Facility Assessment by the SHW Group, Inc. further identifying additional "ADA Code Deficiencies" at its school facilities.

41. Despite knowing the architectural barriers and dangerous conditions exist, EISD has made only minimal efforts to remove these barriers, even when the cost of such removal is minimal.

42. In 2006 EISD voters passed a \$53 million bond for facility improvement.

43. At a January 2007 Board Study Session about the bond issue, EISD was informed by its Bond Manager that it has ADA Compliance deficiencies dating back to the 1990's.

44. In 2007 at the request of Cheryl Fries and other parents of students with disabilities EISD set up an ADA Task Force to identify and prioritize for immediate address those issues most causing safety concerns and those barriers segregating children with disabilities from other students.

45. Cheryl Fries and other parents of students with disabilities served on the ADA Task Force and it toured every EISD school with Registered Accessibility Specialists, individuals licensed by the TDLR to insure compliance with the Texas Accessibility Standards, and school building principals.

46. However, at no time during the ADA Task Force existence did EISD provide its ADA Coordinator to participate in the school architectural barrier evaluation process.

47. Among the items brought to EISD's attention were children in wheelchairs at West Ridge Middle School not being evacuated during fire drills, children with disabilities being educated in inferior facilities such as closets and aging portable buildings, inaccessible restrooms at schools,

playgrounds and sports fields with no access for children with disabilities and numerous emergency egress barriers identified by Registered Accessibility Specialists at Eanes ISD schools.

48. The ADA Task Force presented EISD Superintendent Nola Wellman with a recommended priority list to address the most serious problems with the 2006 bond.

49. After receiving the priority list, Superintendent Wellman dismissed the Task Force. She recommended to EISD that no bond money be spent, but that interest funds would be used to address issues identified as “easy.”

50. Instead of addressing the ADA priority issues identified, Superintendent Wellman asked for and received from the EISD board approval to spend several million dollars of the 2006 bond on two newly constructed artificial turf football practice fields, football stadium upgrades, a \$300,000 batting cage, a new softball-tennis complex, new baseball fields, a lightning detection system, and other non-curricular construction.

51. After the bond passed, Cheryl Fries began to advocate ADA accessibility to the EISD School Board. She has exhausted every avenue of working within the district for compliance, including offering to raise money for playground improvements and new ramps, appealing to administration up the chain of command, and volunteering hundreds of hours on the ADA Task Force.

52. Claire’s school has dangerously sloped ramps with no side guards, inaccessible restrooms, and inaccessible playgrounds. Because there was no accessible route Claire has been prevented from using the playground and participating in recess with her peers for three years.

53. Claire’s middle school, which she will enter next year, has significant ADA Code Deficiencies including lack of an accessible route to 8th grade classroom wing, lack of accessible routes to sports fields, and others.

54. A review of the TDLR records shows that EISD has repeated violated the requirements of

TAS in new construction and failed inspections for accessibility compliance mandated by the TABA.

55. In the last year a new playground was built at Claire's school directly across from the class room used by disabled students. There is no accessible route to the playground and the playground is not accessible to children using wheelchairs.

56. There is a pattern and practice of EISD school violations of ADA, §504, and TABA requirements that is aided by school officials.

57. At Westlake High School brand new designated accessible parking is insufficient, not the closest to the accessible entrances, and has paths of travel that requires travel in public roadways.

58. When able bodied students were ticketed for parking in designated accessible parking in violation of Texas State Law at Chaparral Stadium, the Westlake High School football stadium, school officials wrote to the municipal prosecutor and /or municipal judge and had the tickets dismissed.

59. After the students' tickets were dismissed, school officials directed that the signs designating the accessible parking be removed in front of the stadium, thus further reducing designated accessible parking and allowing students to park in these spaces with impunity.

60. Since stadium parking is also parking for Westlake High School, there is insufficient designated accessible parking at the school.

61. As a result of this pattern and practice accessible parking violations, high school students routinely violate accessible parking laws with the imprimatur of EISD school officials.

62. Although EISD superintendent Wellman continues to promise ADA compliance, she has never identified what architectural barriers she intends to remove or in what time table, and it is always promised in a future bond.

63. In January 2009 Cheryl Fries made a formal request under the Texas Open Records Act for the EISD ADA transition plan, the EISD ADA self-evaluation, and any and all documents related to formal citizen review of the ADA transition plan and self-evaluation.

64. In February 2009 Cheryl Fries received a response from EISD stating “I’m sorry to inform you that your request is still being processed, and the District reasonably believes that it may be unable to produce the information requested within ten business days following receipt of your request. The District is providing you notice that responsive information, except for documents subject to pending request for an opinion for the Office of the Attorney General, shall be ready on or before Monday, March 2, 2009.”

65. On February 25, 2009 Cheryl Fries received a response stating that the documents that were not subject to the pending request for an opinion for the Office of the Attorney General would be available for her review, but that “I did not locate any single document that ‘identifies obstacles, describes in detail the methods that will be used to make facilities accessible, specifies the schedule for taking the steps necessary to achieve full program accessibility, and indicates the person responsible.’”

66. To the date of this filing EISD has never identified what documents are being withheld “pending request for an opinion for the Office of the Attorney General,” has not produced these documents, and has not produced an Attorney General opinion stating that such documents could be withheld.

67. To the date of this filing EISD has not produced any plan for removing the architectural barriers it knows to exist that are dangerous to students and others with mobility impairments and that impair the education process by these children.

**CAUSES OF ACTION**  
**Count 1**  
**(Tex. Hum. Res. Code - Discrimination)**

68. TEX. HUM. RES. CODE § 121.003(a) provides that persons with a disability have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

69. TEX. HUM. RES. CODE § 121.003(d)(1) specifically provides that failure to comply with the provisions of the TABA<sup>34</sup> is discrimination and § 121.004(b) provides that any person that violates §121.003 is deemed to have deprived a person with a disability of his or her civil liberties. The person with a disability deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction.

70. The Defendants have violated TABA<sup>35</sup> by failing to design and construct buildings and facilities in the EISD on or after January 1, 1993 to the extent required by regulations (the Texas Accessibility Standards) issued by the TDLR.

71. The Defendants have violated the TABA<sup>36</sup> by allowing an application to be filed with a local governmental entity for building construction permits before the date the plans and specifications were submitted to the Texas Department of Licensing and Regulation for review.

72. The Defendants have violated the TABA<sup>37</sup> by allowing construction, renovation, modification, or alteration of the building or facility to begin before the date the plans and

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<sup>34</sup>On Sept. 1, 2003 Art 9102 was changed to Chapter 469. The reference to Art 9102 in the THRC §121.003 has not been updated to reflect the change. The revisor's note, however, at the end of Chapter 469 makes it clear that statutory references to Art. 9102 now mean Chapter 469. Specifically "Sec. 8. All references in law to the former architectural barriers statute, Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), mean this article."

<sup>35</sup>Tex. Civ. Stat. Art. 9102 Sec. 2(a)(4).

<sup>36</sup>Tex. Civ. Stat. Art. 9102 Sec. 5(k).

<sup>37</sup>*Id.*

specifications were submitted to the Texas Department of Licensing and Regulation.

73. As a direct and proximate result of the Defendants' violations of the TABA as set forth above, Claire and members of the PROPOSED CLASS have been denied appropriate and dignified access into and use of EISD facilities and the Defendants have violated Claire's civil rights and the civil rights of all members of the PROPOSED CLASS.

**Count 2**  
**(ADA, Title II - Disability Discrimination)**

74. The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."<sup>38</sup>

75. The regulations implementing the Americans with Disabilities Act provide that it is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity.<sup>39</sup>

76. Because a EISD facilities are inaccessible to or unusable by individuals with disabilities, Defendants have denied the right to participate in or benefit from the services, programs or activities at Eanes Independent School District to Claire and members of the PROPOSED CLASS and have subjected and continue to subject them to discrimination on the basis of disability.

77. As a direct and proximate result EISD's violation of Claire's civil rights under the ADA, she and members of the PROPOSED CLASS have suffered inconvenience, embarrassment, humiliation, emotional distress, along with the indignity and stigma of discrimination.

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<sup>38</sup>42 USC §12132.

<sup>39</sup>28 CFR §35.130 (b)(1)(I).

**Count 3**  
**(Rehabilitation Act - Disability Discrimination)**

78. The Rehabilitation Act of 1973 provides “No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>40</sup>

79. Because a EISD facilities are inaccessible to or unusable by individuals with disabilities, Defendants have excluded from participation in, denied the benefits of the services, programs, or activities of the Eanes Independent School District, and have subjected and continue to subject Claire and members of the PROPOSED CLASS to discrimination on the basis of disability.

80. As a direct and proximate result of EISD’s violation the civil rights of Claire and members of the PROPOSED CLASS under the Rehabilitation Act of 1973, they have suffered inconvenience, embarrassment, humiliation, emotional distress, the indignity and stigma of discrimination.

**REQUEST FOR RELIEF**

Plaintiff respectfully pray that the Court enter an order granting the following relief.

81. An order directing Defendants to remove the architectural barriers barring the full and equal access to the facilities of EISD by individuals with disabilities enjoyed by those who do not have a mobility impairment, and, for Defendants to make Eanes Independent School District facilities readily accessible to and usable by Claire and members of the PROPOSED CLASS, consistent with the ADA Accessibility Guidelines for Buildings and Facilities and/or the Uniform Federal Accessibility Standards and the Texas Accessibility Standards.

82. An order directing Defendants cease excluding Claire and members of the PROPOSED

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<sup>40</sup>29 USC §794.

CLASS from participation in, denying the benefits of, or subjecting to discrimination under any program or activity at Eanes Independent School District.

83. An award to Plaintiffs of all attorney's fees, including litigation expenses and all costs; and;

84. An award to Plaintiff for all other relief at law and in equity for which the Court deems appropriate.

Respectfully submitted,



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