

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(WORCESTER DIVISION)

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G, a 12-year-old minor	)	Civil No. 4:15-cv-40116-TSH
suing by a fictitious name for privacy reasons,	)	
MOTHER, and FATHER, suing under	)	
fictitious names to protect the	)	
identity and privacy of G, their minor child,	)	
	)	
Plaintiffs,	)	
	)	
-v-	)	
	)	
THE FAY SCHOOL,	)	
by and through its Board of	)	
Trustees, and ROBERT GUSTAVSON,	)	
	)	
Defendants.	)	
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**PLAINTIFFS’ MOTION FOR LEAVE TO AMEND THE FIRST AMENDED  
COMPLAINT AND CERTIFICATION OF RULE 7.1(2) CONFERENCE**

Plaintiffs respectfully move this Court, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, for leave to file a Second Amended Complaint. A copy of the Proposed Second Amended Complaint is attached to this Motion. This Proposed Second Amended Complaint, if allowed, would add one Count that is based on the matters already alleged in the First Amended Complaint. The newly proposed Count, would be inserted as Count II and is found in the Proposed Amended Complaint at pages 31 and 32. This proposed Count alleges that not only did defendants, The Fay School and its head Robert Gustavson, fail to provide plaintiff G, a young student, with an accommodation for his disability as required under the Americans with Disabilities Act (“ADA”) (Title 42 U.S.C. §12182(a) as has already been alleged in Court I), but that they also retaliated against him and his parents by reason of their having asserted their right to seek an accommodation for his disability. Such retaliation gives rise to a separate claim under

the ADA. *See*, 42 U.S.C. §12203(a) and (2), which prohibit discrimination by Fay against plaintiffs because they have opposed Fay's Wi-Fi policy and practice and because plaintiffs have made a charge seeking relief under the ADA. These provisions also prohibit Fay from intimidating and interfering with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the ADA. The Proposed Amended Complaint, at pages 31 and 32 alleges that defendants have violated these prohibitions.

This motion is based on the pleadings and other papers on file in this case and on the accompanying Memorandum of Points and Authorities.

**MEET AND CONFER CERTIFICATION**

The undersigned hereby certifies that he has met and conferred with opposing counsel, Jaime McKean, Esq., to discuss this motion as required under Local Rule 7.1 and Ms. McKean states that she will not consent because she reserves the right to oppose the motion.

Dated: January 19, 2016

Respectfully submitted,

/s/ John J.E. Markham, II  
John J.E. Markham, II  
(BBO No. 638579)  
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*Attorney for the Plaintiffs*

**CERTIFICATE OF SERVICE**

I, John J.E. Markham, II, do hereby certify that on January 19, 2016, I served the foregoing document via electronic mail on opposing counsel:

Jaime McKean, Esq.  
Sara Fay, Esq.  
Schwartz Hannum PC  
11 Chestnut Street  
Andover, MA 01810-3744

*/s/ John J.E. Markham, II*  
John J.E. Markham, II