

Suit over service dog may proceed

Dog

Case involves student in Gates Chili schools

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A federal judge has cleared the way for a U.S. Department of Justice lawsuit to proceed against the Gates Chili Central School District over a special-needs child's service dog.

In a ruling handed down July 28, U.S. District Judge Charles J. Siragusa denied the school district's motion for summary judgment in the case, which concerns whether 9-year-old Devyn Pereira may bring her service dog to school without being accompanied by a dog handler provided at her family's expense.

For more than three years, Pereira's

See DOG, Page [10A](#)

Continued from Page 3A

mother, Heather Pereira, has been battling the school district over the dog. Devyn has Angelman syndrome — which manifests as severe autism and epilepsy — and relies on the dog to help her walk and sit still and to detect her life-threatening seizures. In September, Devyn will be in a fourthgrade program for medically fragile children at Neil Armstrong Elementary School.

The federal lawsuit was filed in September 2015 after the district refused a Department of Justice directive to reimburse Heather Pereira \$25,000 she had spent on dog handler fees and challenged the ruling with the state Education Department.

Announcing the suit, which seeks an order finding the district in violation of the Americans With Disabilities Act, U.S. Attorney William Hochul said “it is no longer acceptable — if ever it was — for a district to refuse reasonable modifications to a child who seeks to handle her own service dog. Certainly since passage of the American with Disabilities Act in 1990, such failure not only violates the dictates of conscience, it also violates the law.”

In court documents, the school district contends that Devyn's condition is such that she is unable to serve as a true handler for her service dog, and that the district is not responsible for paying to provide dog handling services.

However, Pereira and the Department of Justice say that the girl is able to give the dog — a white Bouvier des Flandres named Hannah — commands using hand gestures or signals, and is able to tether herself to the dog. Hannah has been trained so she does not need to eat, drink or go outside for toileting during the school day. All the girl needs, the suit contends, is simple assistance with untethering herself from the dog when appropriate and to occasionally be reminded to issue commands to the dog.

In his ruling, Siragusa agreed with the district's assertion that it is not required under the law to provide a supervisor for the animal. But, he said there remains a factual dispute over whether Devyn can or cannot handle her service dog that must be resolved at trial. When the lawsuit was filed, the district had already accrued more than \$34,000 in legal bills fighting the case. Documents obtained via a Freedom of Information Law request show the district racked up at least \$36,000 more in legal fees between August 2015 and February 2016. However, the records show insurance picking up about 85 percent of the costs.

District officials did not immediately respond to a request for comment.

"We are happy that Judge Siragusa is not dismissing our case," said Heather Pereira in a text message. "Now we have the chance to show the court what Devyn can do! Gates would like to highlight her challenges and present her in such a way that makes her look deficient. That simply is not the case. My little girl deserves the opportunity to show off what she's capable of and to have all these roadblocks removed so her full potential can be reached."

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Heather Pereira, right, poses with her daughter Devyn, left, and Devyn's nanny Jenn Horozko, along with Devyn's service dog, Hannah, in this photo from March 2015.

FILE PHOTO

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HEATHER PEREIRA

MOTHER OF DEVYN PEREIRA

