

**Shawn E. Abrell**, WSBA No. 41054, *Pro Hac Vice*  
3405 NW 31<sup>st</sup> Circle, Camas, Washington 98607  
Tel.: 503.224.3018; Fax: 503.222.0693  
E-Mail: shawn.e.abrell@gmail.com  
*Lead Counsel for Plaintiffs*

**Tyl W. Bakker**, OSB No. 90200  
621 SW Alder, Suite 621, Portland, Oregon 97205  
Tel.: 503.244.4157; Fax: 503.220.1913  
E-Mail: tylbakker@gmail.com  
*Local Counsel for Plaintiffs*

**United States District Court**  
**District of Oregon**  
**Portland Division**

**AHM**, by and through  
her Guardian *ad litem* and father,  
David Mark Morrison, and  
**David Mark Morrison**, individually,  
  
Plaintiffs,

v.

**Portland Public Schools**,  
  
Defendant.

Civil Action No. 3:11-cv-00739-MO

**Second Amended Complaint for  
Declaratory, Injunctive or  
Other Relief**

**Demand for Jury Trial**

COMES NOW AHM and David Mark Morrison, father and daughter, and allege:

## Introduction

1. In 1776, the United States Declaration of Independence declared that all men are endowed with certain inalienable rights, and that ‘among these are *life, liberty, and the pursuit of happiness.*’
2. Children have the *fundamental* right to be free from communicable disease, ill health, and death. *People v. Pierson*, 176 NY 201, 68 NE 243 (1903).
3. *Eisenstadt v. Baird*, 405 US 438,454 (1972), was an important Supreme Court case that found the right to privacy belongs to the individual person, and prevents government interference with ‘matters so fundamentally affecting a person as the decision whether to bear or beget a child.’
4. In 1923, the Supreme Court first recognized family autonomy and the right of parents to control the upbringing of their children in *Meyer v. Nebraska*, 262 US 390 (1923).  
The Court went on to state,

privileges long recognized at common law are essential to the orderly pursuit of happiness by free men. [And] \* \* \* *the established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, [nor] by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. [Where] determination by the Legislature of what constitutes proper exercise of \* \* \* Power is not final or conclusive but is subject to supervision by the courts. (Italics added) Id. ¶ 12.*

5. In 1944, the Supreme Court recognized the custody, care and nurture of the child reside first in the parents and that this was a private realm of family life the State cannot enter:

*it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the State cannot enter. (Italics added) Prince v. Massachusetts, 321 US 158, 15 (1944).*

6. '[T]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. *This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.*' (Italics added). *Wisconsin v. Yoder*, 406 US 20, 46 (1972).

7. In 1983, "the Court has found that the relationship of love and duty in recognized family unit is an interest in liberty entitled to Constitutional protection \* \* \*." *Lehr v. Robertson*, 463 US 248 (1983).

8. In 2000, the Supreme Court held:

In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decision concerning the care, custody, and control of their children. *Troxel v. Granvill*, 530 US 57, 66 (2000).

9. Today, Portland Public Schools' use of WI-FI to educate via the internet denies AHM her rights and basic liberties under the Fifth and Fourteenth Amendments of life, liberty, and procreation.

10. Portland Public Schools' use of WI-FI to educate via the internet denies David Morrison's rights and basic liberties under the Fourteenth Amendment to the care and control of his child's health and continuing well-being.

11. A narrowly tailored less intrusive means of educating via the internet that will not deny or burden AHM's and David Morrison's rights and basic liberties is to use a cabled system.

12. For these reasons, AHM and David Morrison ask this Court to enjoin, preliminarily and permanently, Portland Public Schools' use of WI-FI in its schools.

### **Jurisdiction and Venue**

13. AHM and David Morrison are individual residents, domiciled and citizens of the State of Oregon.

14. Upon information and belief, Portland Public Schools is a municipal corporation incorporated under the laws of the State of Oregon.

15. The controversy between AHM and David Morrison and Portland Public Schools involves federal questions and 42 USC § 1983, and thus this Court has original jurisdiction pursuant to 28 USC § 1331.

### **Nature of Dispute**

16. This action pursuant to 42 USC § 1983 seeks (1) a declaration that Portland Public Schools' use of WI-FI to educate via the internet is unconstitutional under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, (2) a declaration that Portland Public Schools' use of WI-FI to educate via the internet is in violation of Federal Code of Regulations, Title 45, The Public Welfare, Part 46, Subparts A and D, and international law, and (3) a preliminary and permanent injunction preventing Portland Public Schools from using WI-FI.

17. Schoolchildren and their parents have no choice but to allow the school to expose themselves/their children to dangerous WI-FI technology. In fact, the school children will be exposed to as much as 30-40 hours per week of constant digitally encoded WI-FI signals from each wireless device in the child's vicinity. Based upon a review of the Mount Tabor WI-FI Floor Plan (Ex. A), a given child is subject to signals from multiple WI-FI transmitters and rooms full of students transmitting numerous laptop or other wireless signals.

18. Children are more vulnerable to radiofrequency fields because of the susceptibility of their developing nervous systems. Radiofrequency penetration is greater relative to head size in children, and they have a greater absorption of radiofrequency energy in the tissues of the head at WI-FI frequencies because their skulls are thinner, their brains are smaller, and their brain tissue is more conductive than that of adults since it has a higher water content and ion concentrations.

19. AHM desires to go to school in an environment that will not burden her life or her ability to procreate and David Morrison desires to refrain his daughter from WI-FI exposure, however, Portland Public Schools' use of WI-FI to educate via the internet denies their rights in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

20. To enforce the rights afforded by the United States Constitution, AHM and David Morrison bring this suit pursuant to 42 USC § 1983 for declaratory and injunctive relief against Portland Public Schools' use of WI-FI. AHM and David Morrison also seek to recover all their attorneys' fees, costs, and expenses incurred in this action and any other relief that this Court may order.

### **Facts**

21. After deciding against installing any cell mast technology on its buildings (see Correspondence, Patrick Wolfe, Portland Public Schools' Health and Safety Manager, July 15, 2010, Ex. B), Portland Public Schools continues its use of WI-FI, a proprietary choice, to educate via the internet as opposed to cabled systems, including at its Mount Tabor Middle School where AHM is a student.

22. WI-FI is genotoxic, carcinogenic, neurotoxic and otherwise causing ongoing harmful adverse health effects to AHM, other school children, teachers, and staff.

23. Portland Public Schools' use of WI-FI to educate via the internet deprives and burdens AHM's life, liberty, and ability to procreate. Portland Public Schools' deprivation and burdening of AHM's life, liberty, and ability to procreate deprives her of rights and basic liberties guaranteed by the Fifth and Fourteenth Amendments. Life, liberty, and the ability to procreate are fundamental rights guaranteed to all citizens, especially children. Substantial, cumulative, and progressive exposure to WI-FI during her developmental growth stages while at school deprives and burdens AHM's life, liberty, and ability (in the case of children, the future ability) to procreate and causes irreparable harm as a direct result of Portland Public Schools' violations of her constitutional rights.

24. Portland Public Schools' use of WI-FI to educate via the internet denies David Morrison the ability to care for and control his child's health and continuing well-being. David Morrison's inability to care for and control his child's health and continuing well-being deprives him of rights and basic liberties guaranteed by the Fourteenth Amendment. It is a 'fundamental right of parents to make decisions concerning the care, custody, and control of their children.' *Troxel v. Granvill*, 530 US 57, 66 (2000). Each day that David Morrison is denied the care and control of his child's health and continued well-being causes irreparable harm as a direct result of Portland Public Schools' violation of his constitutional rights.

25. If Portland Public Schools' use of WI-FI to educate via the internet is not enjoined, Portland Public Schools will continue to use WI-FI, thereby depriving AHM and David Morrison of their constitutional rights under the Fifth and Fourteenth Amendments. The declaratory and injunctive relief sought, on the other hand, will simply require Portland Public Schools' switch from using WI-FI to a narrowly tailored cabled system to educate via the internet.

## **Claims for Relief**

### **Claim One: Due Process**

26. AHM and David Morrison incorporate by reference paragraphs 1 through 25, *supra*, as if fully set forth herein.

27. Portland Public Schools' use of WI-FI to educate via the internet violates fundamental liberties that are protected by the Due Process Clause as applied to AHM and David Morrison.

28. Portland Public Schools' use of WI-FI to educate via the internet burdens and deprives AHM's rights and fundamental liberties under the Fifth and Fourteenth Amendments as to life, liberty, and ability to procreate.

29. Portland Public Schools' use of WI-FI to educate via the internet burdens David Morrison's rights and fundamental liberties under the Fourteenth Amendment as to the care and control of his child's health and continuing well-being.

### **Claim Two: Violation of 42 USC § 1983**

30. AHM and David Morrison incorporate by reference paragraphs 1 through 29, *supra*, as if fully set forth herein.

31. Insofar as the decision to educate via the internet by use of WI-FI, Portland Public Schools, acting under color of state law, is depriving and will continue to deprive AHM and David Morrison of rights and fundamental liberties secured by the Fifth and Fourteenth Amendments to the United States Constitution in violation of 42 USC § 1983.

**Claim Three: Violation of Title 45, The Public Welfare, Part 46**

32. AHM and David Morrison incorporate by reference paragraphs 1 through 31, *supra*, as fully set forth herein.

33. Insofar as they are compelling the use of WI-FI to educate via the internet by use of WI-FI, because WI-FI is an ongoing experiment by the National Toxicology Program, and, upon information and belief, such research on children has not been approved by the Institutional Review Board nor has any consideration been given to the children's age or any attempt to mitigate the risks of this research, Portland Public Schools, acting under color of State law, is in violation of Title 45, The Public Welfare, Part 46, Subparts A and D.

**Irreparable Injury**

34. AHM and David Morrison incorporate here by reference paragraphs 1 through 33, *supra*, as if fully set forth herein.

35. AHM and David Morrison are now irreparably injured by Portland Public Schools' use of WI-FI to educate via the internet that is in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments and Title 45, The Public Welfare, Part 46, Subparts A and D. AHM's and David Morrison's injuries will be redressed only if this Court declares Portland Public Schools' use of WI-FI to educate via the internet unconstitutional and enjoin Portland Public Schools from using WI-FI.

36. An actual and judicially cognizable controversy exists between AHM and David Morrison and Portland Public Schools regarding whether Portland Public Schools' use of WI-FI to educate via the internet violates the Due Process Clauses of the Fifth and Fourteenth Amendments, and Title 45, The Public Welfare, Part 46, Subpart A and D.

37. AHM and David Morrison have suffered and will continue to suffer actual injury in fact that is concrete and particularized and actual, not conjectural or hypothetical.



38. Portland Public Schools' present and ongoing use of WI-FI is to the detriment of AHM and David Morrison.

### **Prayer**

Wherefore, AHM and her father David Mark Morrison pray and respectfully request this Court enter judgment as follows:

1. Pursuant to 28 USC § 2201, construe Portland Public Schools' use of WI-FI to educate via the internet and enter a declaratory judgment stating that it violates the Due Process Clauses of the Fifth and Fourteenth Amendments and 42 USC § 1983.
2. Pursuant to 28 USC § 2201, construe Portland Public Schools' use of WI-FI to educate via the internet and enter a declaratory judgment stating that it violates Title 45, The Public Welfare, Part 46.
3. AHM and David Morrison respectfully request that this Court enter a preliminary and permanent injunction enjoining Portland Public Schools' use of WI-FI.
4. AHM and David Morrison respectfully requests costs for suit, including reasonable attorneys' fees under 42 USC § 1988, and all further relief to which they may be justly entitled.

Dated this 1<sup>st</sup> day of September, 2011.

*/s/ Shawn E. Abrell*

SHAWN E. ABRELL, WSBA No. 41054  
*Lead Counsel for Plaintiffs*  
*\*Pro Hac Vice*

*/s/ Tyl W. Bakker*

TYL W. BAKKER, OSB No. 90200  
*Local Counsel for Plaintiffs*

### **Demand for Jury Trial**

AHM and David Morrison hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.