

Shawn E. Abrell, WSBA No. 41054, *Pro Hac Vice Pending*
3405 NW 31st Circle, Camas, Washington 98607
Tel.: 503.512.7712; 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: twbpc@pcez.com
Local Counsel for Plaintiffs

United States District Court
District of Oregon
Portland Division

Alexandra Helene Morrison, by and through
her Guardian *ad litem* and father,
David Mark Morrison, and
David Mark Morrison, individually,

Plaintiffs,

Civil Action No.

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

v.

Portland Public Schools,

Defendant.

Demand for Jury Trial

COMES NOW Alexandra Helen Morrison 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' policy of educating via the internet by use of WI-FI denies Alexandra Morrison her rights and basic liberties under the Fifth and Fourteenth Amendments of life, liberty, and procreation.
10. Portland Public Schools' policy of educating via the internet by use of WI-FI 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 policy that would not deny or burden Alexandra and David Morrison's rights and basic liberties would be to use a cabled system to educate via the internet.
12. For these reasons, Alexandra 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. Alexandra 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 Alexandra 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' policy of educating via the internet by use of WI-FI 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' policy of educating via the internet by use of WI-FI 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. Alexandra Morrison 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' policy of educating via the internet by use of WI-FI 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, Alexandra and David Morrison bring this suit pursuant to 42 USC § 1983 for declaratory and injunctive relief against Portland Public Schools' use of WI-FI. Alexandra 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 proprietary policy of educating via the internet by means of WI-FI as opposed to cabled systems, including at its Mount Tabor Middle School where Alexandra Morrison is a seventh grade student.

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

23. Portland Public Schools' policy deprives and burdens Alexandra Morrison's life, liberty, and ability to procreate. Portland Public Schools' deprivation and burdening of Alexandra Morrison'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 Alexandra Morrison'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' policy 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' policy of educating via the internet by use of WI-FI is not enjoined, Portland Public Schools will continue to use WI-FI, thereby depriving Alexandra 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' to change its policy of using WI-FI to a narrowly tailored cabled system to educate via the internet.

Claims for Relief

Claim One: Due Process

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

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

28. Portland Public Schools' policy of educating via the internet by use of WI-FI in its schools burdens and deprives Alexandra Morrison's rights and fundamental liberties under the Fifth and Fourteenth Amendments as to life, liberty, and ability to procreate.

29. Portland Public Schools' policy of educating via the internet by use of WI-FI in its schools 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. Alexandra and David Morrison incorporate by reference paragraphs 1 through 29, *supra*, as if fully set forth herein.

31. Insofar as they are enforcing the policy of educating via the internet by use of WI-FI, Portland Public Schools, acting under color of state law, is depriving and will continue to deprive Alexandra 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. Alexandra and David Morrison incorporate by reference paragraphs 1 through 31, *supra*, as fully set forth herein.

33. Insofar as they are compelling the policy of educating via the internet by use of WI-FI and 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. Alexandra and David Morrison incorporate here by reference paragraphs 1 through 33, *supra*, as if fully set forth herein.

35. Alexandra and David Morrison are now irreparably injured by Portland Public Schools' policy of educating via the internet by use of WI-FI 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. Alexandra and David Morrison's injuries will be redressed only if this Court declares Portland Public Schools' policy of educating via the internet by use of WI-FI unconstitutional and enjoin Portland Public Schools from using WI-FI.

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

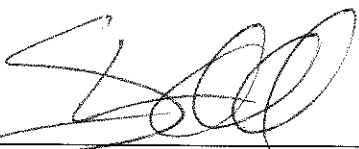
37. Portland Public Schools' present and ongoing use of WI-FI is to the detriment of Alexandra and David Morrison.

Prayer

Wherefore, Alexandra Helene Morrison 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' policy of educating via the internet by use of WI-FI and enter a declaratory judgment stating that this policy 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' policy of educating via the internet by use of WI-FI and enter a declaratory judgment stating that this policy violates Title 45, The Public Welfare, Part 46.
3. Alexandra and David Morrison respectfully request that this Court enter a preliminary and permanent injunction enjoining Portland Public Schools' use of WI-FI.
4. Alexandra 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 17th day of June, 2011.


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


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

Demand for Jury Trial

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



Portland Public Schools

501 N Dixon St
Portland, OR 97227
T: 503.916.3401
F: 503.916.3253

Facilities & Asset Management

DATE: July 15, 2010

TO: David Morrison, Mt. Tabor Parent

FROM: Patrick Wolfe, Mgr., Health & Safety

C: N. Jwayad, Chief Information Officer
D. Millberg, Director of Technical Operations

RE: Testing of Wi-Fi System

In response to your questions about testing the wireless computer systems owned by the district:

- The district's Information Technologies department does not test devices. This is done by the vendor, Cisco Systems, in accordance with FCC regulations and guidelines recommended by international agencies. I have attached for your review a white paper on this subject issued by Cisco Systems.
- The district will not allow testing to be carried out by anyone other than an independent third party chosen through a public bidding process. The Information Technology department sees no need for additional testing.

Thank you for your emails relating to radio frequency emissions. I have read them with interest. Almost all relate to cell phone emissions, which are much stronger than wi-fi. As I've mentioned to you, our wi-fi signals are so weak at Mt. Tabor (and at many other schools) that the signals from the cellular carrier Clear Channel over-ride them. **The district some time ago decided against installing any cell phone technology on its buildings.** A few buildings still have cellular equipment, which will be removed at the end of the lease contracts.