UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES, Plaintiff, v. NORTHERN ILLINOIS SPECIAL RECREATION ASSOCIATION, Defendant.	)	No. 12 CV 7613 Judge Zagel

MEMORANDUM OF LAW IN SUPPORT OF
UNITED STATES' OPPOSITION TO NISRA'S MOTION TO DISMISS

Introduction

The United States alleges in this Americans with Disabilities Act (ADA) suit, that NISRA—an inter-governmental organization that runs recreational programs for children and adults with disabilities—is discriminating against two program participants with epilepsy by refusing to permit its staff to administer Diastat AcuDial (Diastat), an emergency-use-only medication used to stop prolonged seizures. NISRA contends that the United States has not sufficiently alleged that the organization is discriminating against the affected children on the basis of their disabilities. On the contrary, the complaint sufficiently sets forth a claim of disability discrimination against NISRA: namely, that by refusing to administer Diastat, NISRA is needlessly exposing program participants with epilepsy to increased risk of serious harm, thereby denying them, on the basis of disability, equal access to the benefits afforded to other program participants. Because NISRA has fair notice of the United States' claim and the grounds upon which it rests, its motion to dismiss for failure to state a claim should be denied.

Facts

NISRA's sole mission is serving individuals with disabilities. NISRA MTD at 2. To that end, it provides year-round recreational activities for children and adults with developmental, physical, neurological, emotional, and learning disabilities. Complaint at ¶ 4. Although NISRA employs no medical personnel, its staff (which includes camp counselors and site directors) has experience working with individuals with disabilities and typically receives 12 to 16 hours of orientation and training, covering general information about disabilities, adaptive activities, behavior management, and first-aid and emergency procedures. *Id.*

As part of their duties, NISRA counselors are responsible for assisting individuals who need specialized personal care, including feeding children with gastrostomy feeding tubes; assisting participants' use of the toilet; and changing clothing and diapers. *Id*. In addition, NISRA staff regularly administer over-the-counter, prescription, and emergency-use-only medications to program participants. Complaint at ¶ 7. For example, NISRA staff administer epinephrine auto-injector shots (such as "EpiPen") to children experiencing life-threatening allergic reactions, which requires them to jab a spring-loaded hypodermic needle into a program participant's outer thigh, and routinely dispense asthma medication to children with asthma. Complaint at ¶ 7.

NISRA also serves individuals who have been diagnosed with epilepsy, a neurological disorder defined as a tendency for recurrent seizures. Prolonged seizures lasting longer than ten minutes are extremely dangerous and can cause serious brain injury or even death. Complaint at ¶ 8. NISRA staff is specifically trained how to recognize and respond to seizures pursuant to NISRA's seizure management plan. Pursuant to this plan, participants with a history of seizures must submit a seizure plan from their physician, describing the type of seizures they experience, the medications they currently take, and the protocol to follow in case of a seizure. If a seizure occurs,

NISRA's *current* policy requires the nearest staff member to move the other participants away from the area to preserve the person's privacy. The staff member then eases the person onto the ground and turns him onto his side. Additionally, the staff member is directed to follow the person's seizure plan to the best of his ability and call 911 under certain circumstances. This, however, is where NISRA stops. It refuses to permit its staff to administer the *only* FDA-approved medication for out-of-hospital treatment of emergency, prolonged seizures—Diastat. Complaint at ¶ 12.

Diastat is a gel form of diazepam, a central nervous system depressant that is used to stop seizures, thereby preventing the increased risk of brain damage or death that could result if seizures persist. Timing is of the essence in the administration of Diastat: the medication works most effectively if administered within five minutes of the onset of a seizure; the longer it takes to administer Diastat, the less effective it is at arresting an ongoing seizure. *Id*.

Diastat is manufactured and marketed for administration by non-medical lay people and caregivers: "[B]ecause *a non-health professional* will be obligated to identify episodes suitable for treatment, make the decision to administer treatment upon that identification, administer the drug, monitor the patient, and assess the adequacy of the response to treatment, a major component of the prescribing process involves the necessary instruction of this individual." NISRA MTD, Exhibit A at pg. 5 (2007 Physician's Desk Reference) (emphasis added). In fact, NISRA previously permitted its staff to administer Diastat to program participants with epilepsy, but for reasons that are unclear, discontinued this policy in the summer of 2008. Complaint at ¶ 17. Like EpiPen, Diastat is pre-filled with a single dose prescribed by the participant's treating physician and packaged in a plastic auto-injector for emergency-use only. NISRA MTD at Ex. A, pg. 5. Diastat, however, is administered rectally rather than by injecting the skin. NISRA MTD at Ex. C, pg. 4. The risk of adverse reaction from the administration of the medication is low: "[t]he majority of adverse events

were mild to moderate in severity and transient in nature." NISRA MTD, Ex. A at pg. 5.

In this case, two NISRA program participants with epilepsy—17-year-old M.M. and 8-year-old N.R.—have been prescribed Diastat by their treating physicians and have requested that NISRA modify its existing policy so that camp staff can administer the medication when needed. Complaint at ¶ 12, 23. NISRA refuses to do so.

Argument

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint; it is not a mechanism to decide the merits. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). All well-pleaded factual allegations of the complaint are accepted as true and all reasonable inferences are drawn in plaintiff's favor. *Hecker v. Deere & Co.*, 556 F.3d 575, 580 (7th Cir. 2009). In fact, "the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511 (2002) (quotation omitted). For that reason, a complaint alleging discrimination need not raise every element of the *prima facie* case to survive a motion to dismiss. *Id.* at 508. Rather, it is enough if the complaint contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

Indeed, the complaint's purpose is merely to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As such, the complaint need not include "detailed factual allegations," but it must provide "enough facts to state a claim for relief that is plausible on its face." *Id*. at 569-570. When viewed in that light, it is clear that the United States' complaint sufficiently sets forth a plausible violation of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations, 28 C.F.R. Part 35, and thus this case should not be dismissed.

I. The Complaint States a Plausible Claim Against NISRA for Violating the ADA.

The ADA is a comprehensive civil rights law enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA, at issue in this case, 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." 42 U.S.C. § 12132.

Congress explicitly delegated to the Department of Justice the authority to promulgate regulations under Title II. 42 U.S.C. § 12134(a); 28 C.F.R. Part 35. Accordingly, the Department's regulations and interpretation thereof are entitled to substantial deference. *Chevron U.S.A. Inc. v. Natural Resource Defense Counsel, Inc.*, 467 U.S. 837, 844 (1984); *Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999) ("[b]ecause the Department of Justice is the agency directed by Congress to issue regulations implementing Title II . . . its views warrant respect.") (internal citations omitted). The discrimination prohibited by Title II of the ADA includes, among other things, denying a benefit to a qualified individual because of her disability, providing her with a lesser benefit than is given to others, or limiting her enjoyment of the rights and benefits provided to other program participants. *See, e.g.*, 28 C.F.R. § 35.130(b)(1)(i), (iii), (vii). The Title II regulations also require a public entity to: "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

Here, the complaint presents numerous factual allegations that the requested modification (permitting NISRA staff to administer Diastat in emergency situations) is necessary to avoid

discrimination on the basis of disability. NISRA's refusal to modify its policy denies program participants with epilepsy an equal opportunity to participate in and enjoy the recreational programs that NISRA provides by exposing these individuals to an increased risk of serious injury and even death—a risk that other program participants do not have to take. Complaint at ¶¶ 8, 19, 26, 29. NISRA quibbles that the United States failed to connect-the-dots by specifically pleading that NISRA's refusal to administer Diastat is "because of" the individuals' disabilities, and that this lack of specificity warrants dismissal. NIRSA MTD at 3. First, it is, of course, implicit in the United States' alleged facts that NISRA's actions are based on disability when the organization denies benefits to program participants with epilepsy who are requesting, as a reasonable modification, a medication that is prescribed *only* to patients with epilepsy. Second, contrary to NISRA's assertions, the United States need not plead with specificity every fact implicated in a disability discrimination case; the United States has provided more than adequate notice of the factual predicate for its disability discrimination claim and the causal hook anchoring it to M.M.'s and N.R.'s epilepsy.[1] The liberal notice pleading standard of Federal Rule of Civil Procedure 8(a)(2) requires no more. The bulk of NISRA's remaining arguments are better suited for summary judgment or trial because they cannot be fairly evaluated by either the court or the United States without the development of additional facts—facts NISRA has not, and cannot, appropriately provide at this stage of the pleadings.

II. NISRA Fails to Assert a Basis for Dismissing the United States' ADA Claim on a Motion to Dismiss.

As noted above, Title II requires a reasonable modification of existing policies where the modification is necessary to avoid discrimination on the basis of a disability. 28 C.F.R. § 35.130(b)(7). Thus, failure to reasonably modify a policy is an independent basis of liability under

[1] To the extent the court disagrees, the United States will file an amended complaint.

Title II of the ADA. *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737, 751 (2006). In examining the sub-parts of this regulation, the Seventh Circuit has found that the "on the basis" language requires the plaintiff to show that, "but for" his disability, he would not have been deprived of the services or benefits desired. *Id*. at 752. In other words, plaintiff satisfies the "necessary" element by showing his disability is the reason he is deprived of equal enjoyment of the benefits of the program. *Id.* Further, the modification must be a reasonable one. In its motion to dismiss, NISRA proffers a cramped and mistaken interpretation of both the "necessary" and "reasonable" standards.

A. By Refusing to Administer Diastat, NISRA Is Denying M.M. and N.R. Equal Access To, and Enjoyment of, Its Recreational Programs.

NISRA argues the requested modification is not necessary to avoid discrimination because M.M. and N.R. can fully participate in NISRA's programs without such modification. However, Title II does not simply prohibit outright denial; it also prohibits unequal participation. As defined by Title II's implementing regulation, a public entity may not deny a qualified individual with a disability "an opportunity to participate that is not equal to that afforded others," nor may it "otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity" enjoyed by others receiving the services. 28 C.F.R. § 35.130 (b)(iii), (vii). If a requested modification is needed to ensure full and equal enjoyment by a person with a disability, then the modification is necessary to prevent discrimination on the basis of disability. Thus, NISRA need not actually deny M.M. and N.R. entry to its recreational programs, nor are M.M. and N.R. required to "vote with their feet" and not participate at all in order to fall under the protections afforded by Title II.

In this case, NISRA's proposed modification to call 911 upon the onset of a seizure and to allow a parent or guardian to accompany the children during programs does not allow participants

with epilepsy an "opportunity to participate" that is equal to the other program participants. As alleged in the complaint, forcing participants with epilepsy to wait for paramedics to arrive and risk a prolonged seizure and possible resulting brain damage is not providing equal participation in NISRA programs. Nor is it equal participation when participants with epilepsy must be accompanied by a parent or guardian in order to participate in programs. Finally, the fact that M.M. and N.R. have suffered such unequal participation in the past by attending NISRA programs without the requested modification does not mean they are somehow estopped from now asserting their ADA rights to be allowed an equal opportunity to participate. Thus, the United States has adequately alleged that the modification it seeks is necessary to avoid discrimination.

NISRA next argues its refusal to administer Diastat is not "because of" M.M. and N.R.'s epilepsy, but rather because of a neutral "policy not to administer drugs in contradiction of established medical guidelines (as they appear on the medicines' FDA-approved label, on the manufacturer's package insert, and in the PDR)." NISRA MTD at 9. While it is true that the parties disagree on the applicable medical standards required for the administration of Diastat— that issue is not amenable to resolution at the motion to dismiss stage, well before expert discovery has been conducted in this case. Further, the United States' complaint contains no factual allegations supporting NISRA's contention that it is being requested to provide Diastat beyond medically-recommended doses or in contravention of established medical standards. While NISRA notes that the "FDA label advises that Diastat should not be used to treat more than five seizures per month and no more than one episode every five days," the United States has not requested it contravene this advice. Instead, NISRA continues in its steadfast refusal to administer Diastat to program participants with epilepsy under *any* circumstances. NISRA MTD at 7.

NISRA attempts to analogize the facts in this case to those raised in *Davis v. Francis Howell Sch. Dist*., 138 F.3d 754, 756 (8th Cir. 1998), affirming the district court's granting of summary judgment. But that case is factually distinct. In *Davis*, a school was requested to administer Ritalin at a dosage beyond that recommended in the Physician's Desk Reference (PDR) (unlike in this case, where no request has been made to administer Diastat beyond the limits advised by the FDA). *Id*. at 756-757. The Eighth Circuit held that it was a reasonable modification for the defendant-school to ask that the plaintiff's parents directly administer Ritalin beyond the recommended PDR dosage, while the school nurse would continue to administer Ritalin up to the PDR limit. Thus, the *Davis* case did not, as here, involve an outright refusal to administer the medication at issue. Additionally, unlike in *Davis*, where the Ritalin at issue was administered on a regular pre-determined schedule, the administration of Diastat is done on an emergency basis upon the unpredictable onset of a seizure. Thus, while not conceding that it is reasonable to require parental administration of a medication at regularly scheduled times, *Davis* cannot be analogized to NISRA's proposal that the campers' parents must attend camp with the participant at all times or that the camper must wait for emergency medical assistance to arrive.

B. The United States' Requested Modification Is Reasonable and Does not Constitute an Exempted Personal Service.

1. The United States' Requested Modification Is Reasonable.

In its motion to dismiss, NISRA states that "on the face of Plaintiff's complaint, the accommodation sought here is not reasonable." NISRA MTD at 10. Defendant does not cite any applicable case law from this circuit to support its contention that requesting the administration of Diastat is *per se* unreasonable. Again, this is a fact-intensive inquiry that neither NISRA, nor the United States, have had an opportunity to fully develop at this pre-discovery stage of the pleadings.

Nonetheless, NISRA's supporting exhibits back the United States' contention that it is reasonable to expect NISRA staff, who are permitted to administer EpiPen auto-injector shots to children experiencing life-threatening allergic reactions, to also administer Diastat. In particular, NISRA's Exhibit A, a 2007 Edition of the Physicians' Desk Reference, expressly contemplates that non-medical lay people will be administering Diastat: "[B]ecause *a non-health professional* will be obligated to identify episodes suitable for treatment, make the decision to administer treatment upon that identification, administer the drug, monitor the patient, and assess the adequacy of the response to treatment, a major component of the prescribing process involves the necessary instruction of this individual." NISRA MTD, Ex. A at pg. 5 (emphasis added). Similarly, the Diastat Administration and Disposal Instructions NISRA attached as Exhibits B and C are specifically addressed to the caretakers, *i.e*. lay-people, who are expected to administer the drug, rather than the medical personnel prescribing it. Thus, these exhibits do not support NISRA's argument that having its staff administer Diastat is unreasonable as a matter of law.

Moreover, as pled in the complaint, NISRA already requires participants with a history of seizures to submit a seizure plan in which their doctor describes the type of seizure(s) they experience, the medications they take, and the protocol staff needs to follow in the case of a seizure. Complaint at ¶ 9. Hence, staff members have the requisite knowledge needed to recognize a seizure. Furthermore, after identifying the onset of a seizure, they have been trained to move the participant to a private area, and to follow the details of the individual plan (which previously permitted the administration of Diastat). Thus, NISRA cannot support its contention that it is patently unreasonable to expect staff to recognize and respond to a seizure when existing seizure-management procedures already require that they do just that.

Finally, NISRA expresses indignation that "incredibly, and directly contrary to its position before another federal district court," the United States is now asserting that the ADA requires the administration of Diastat in order to meet Title II's requirements. NISRA MTD at 1. NISRA is correct that, in response to a 2008 claim filed against it in the Western District of Kentucky, the United States initially denied that the Army's failure to administer Diastat to a participant in a child care facility violated Section 504 of the Rehabilitation Act. NISRA MTD, Ex. D. NISRA fails to disclose, however, that the United States settled its claim with the plaintiff in that case, agreeing to administer Diastat after consulting with the Department of Justice's Disability Rights Section. The resulting settlement is a matter of the public record. Thus, there is no support for NISRA's argument that the United States is estopped from asserting that the administration of Diastat is a reasonable modification.

2. Administering Medication Is Not an Exempted Personal Service.

Finally, NISRA asserts that the ADA's regulation on personal devices and services, 28 C.F.R. § 35.135, exempts it from administering Diastat as a "service[] of a personal nature." NIRSA Brief at 13. Defendant's interpretation of this regulation is incorrect. As an initial matter, providing medication to persons with disabilities is not the sort of "personal service" contemplated by this provision of the regulation. *See* U.S. Dep't of Justice, ADA Title II Technical Assistance Manual § II-3.6200 (describing personal services as "services of a personal nature including assistance in eating, toileting, or dressing."). Indeed, NISRA routinely provides medication to individuals in its programs, and that is not considered a personal service. Nevertheless, if the court determines that because of the delivery method necessary for this medication, administration of Diastat does rise to the level of a personal service, NISRA's argument remains unavailing, as personal services are routinely provided to individuals with disabilities who participate in NISRA programs. Thus, while Title II does not

require a public entity to provide personal services where such services are not "customarily provided," the regulation cannot be used to shield a public entity from singling out individuals with disabilities or certain disabilities for discriminatory treatment where personal services are provided to others as part of the service, program, or activity. *See U.S. Dep't of Justice*, ADA Title II Technical Assistance Manual § II-3.6200 ("Of course, if personal services or devices are customarily provided to individuals served by a public entity, such as a hospital or nursing home, then these personal services should also be provided to individuals with disabilities.").

Indeed, courts that have held that § 35.135 limits a public entity's duty to provide reasonable modifications have only done so, as the Department of Justice directs, where such devices or services are not "customarily provided." *See, e.g., McCauley v. Winegarden*, 60 F.3d 766, 767 (11th Cir. 1995)("environmental filtering" device in a courtroom not customarily provided); *Kerry M. v. Manhattan School Dist*. # 114, 2006 WL 2862118, at * 10 (N.D. Ill. 2006) (collapsible wheelchair in school district's bus service not customarily provided). As pled in the complaint, NISRA already customarily provides assistance with personal services, including eating (through the use of gastrostomy feeding tubes), toileting, changing clothes and diapers, and it administers medication such as EpiPen to program participants through auto-injector shots. Complaint at ¶¶ 6, 7. Thus, where, as here, the services sought by the plaintiff are customarily provided in the program in which they are receiving services, the limitations expressed by 28 C.F.R. § 35.135 have no bearing.

C. NISRA Cannot Show That the Requested Modification Would Fundamentally Alter the Nature of Its Services or Impose an Undue Financial Burden as a Matter of Law.

A requested modification will be deemed reasonable unless doing so would fundamentally alter the nature of the public program or cause an undue financial or administrative burden. *Oconomowoc*, 300 F.3d at 789. The ADA defines an undue burden as an action requiring significant

difficulty or expense when considered in light of certain factors. 42 U.S.C. § 12111 (10)(A). Those factors are the nature and cost of the modification, the overall financial resources of the facility, and the effect or impact of the modification on the facility. 42 U.S.C. § 12111 (10)(B). This is, again, a very fact-specific inquiry.

A proposed modification is reasonable if it is "both efficacious and proportional to the costs to implement it," while it is unreasonable if it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program. *Id.* (citing *Vande Zande v. Wisconsin Dep't of Admin*., 44 F.3d 538, 543 (7th Cir.1995), and *Erdman v. City of Fort Atkinson*, 84 F.3d 960, 962 (7th Cir. 1996)); *see also AP ex rel. Peterson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 538 F. Supp. 2d 1125, 1141 (D. Minn. 2008) (holding that administering glucagon to a diabetic child would not likely be unduly burdensome). Furthermore, the Seventh Circuit has explained that to prove an undue burden defense the defendant must show "the costs are excessive in relation either to the benefits of the modification or to the employer's financial survival or health." *Vande Zande*, 44 F.3d at 543. For example, an employer might avoid ADA liability if an otherwise reasonable disability modification would "break him" financially. *Id*.

Here, NISRA has made no factual showing—nor can it, at this early pleading stage— that the costs associated with the administration of Diastat in emergency situations would be excessive in relation to either the benefits of the modification or to NISRA's financial health. There is simply no factual support for NISRA's contention that all staff would have to be trained to administer Diastat and/or additional staff would have to be hired in order to provide the requested modification. The court, therefore, should not accept NISRA's unsubstantiated assertion that the "staff and training" required to administer Diastat are unduly burdensome as a matter of law. NISRA MTD at 15. Without providing any supporting expert and fact testimony on the kind of staff and training it

contends are, in fact, required to administer Diastat, NISRA cannot expect the court to evaluate what should be required.

Finally, to the extent NISRA argues that administering Diastat is not a reasonable modification because requiring it to do so may violate state laws (alluding to *possible* violations of both the Illinois Controlled Substance Act (ILCS 570/102(f)) and the Medical Practice Act of 1987 (225 ILCS 60/49; 225 ILCS 60/59), NISRA's arguments do not support dismissal at this stage of the case. NISRA MTD at 15-17. First, whether NISRA would be in violation of state laws if it administers Diastat involves disputed issues of fact and law as to the meaning and application of the cited state laws that cannot be resolved at this stage of the case. Second, even assuming a conflict exists between state law and NISRA's obligations under the ADA, state laws that present obstacles to compliance with federal obligations are preempted under the Supremacy Clause. *See* U.S. Const. Art. VI, Cl. 2. State law conflicts with federal law either (1) when it is impossible to comply with both state or federal law *or* (2) "where 'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-373 (2000)(citation omitted). The United States Supreme Court has "held repeatedly that state laws can be pre-empted by federal regulations as well as by federal statutes," *Hillsborough County v. Automated Medical Laboratories*, Inc., 471 U.S. 707, 713 (1985), and that "[f]ederal regulations have no less preemptive effect than federal statutes." *Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153 (1982).

In a number of contexts, federal and state courts have correctly held that federal disability rights laws—including the ADA—preempt state statutes to the extent they conflict with federal mandates. *See, e.g., Weaver v. New Mexico Human Servs. Dep't*, 945 P.2d 70, 76 (N.M. 1997) (invalidating state welfare regulation because it conflicted with the ADA); *Barber v. Colorado Dep't*

of Revenue, 562 F.3d 1222, 1232-1233 (10th Cir. 2009) (emphasizing that the proposed accommodation under the ADA is not unreasonable simply because it might require defendants to violate state law). None of these issues, however, can be fairly analyzed in this case without further development of the factual and legal record. In other words, NISRA cannot skirt its federal obligations by hiding behind possible violations of state laws at the trial stage, much less this early in the litigation.

In sum, the balance of NISRA's arguments attack the merits of the complaint, not its sufficiency. When read in the light most favorable to the non-moving party, the complaint contains enough facts to state a plausible claim under Title II of the ADA, and its implementing regulation. At this stage, all that the complaint need provide is fair notice of the claims against the defendant and the grounds upon which they rest. The United States has met this burden.

Conclusion

For all the foregoing reasons, NISRA's motion to dismiss should be denied.

Respectfully submitted,
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