IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

DEBBY ROSE, Plaintiff, v. SPRINGFIELD-GREENE COUNTY HEALTH DEPARTMENT, COX HEALTH SYSTEMS, and WAL-MART SUPERCENTER, Defendants	)	Case No. 6:08-CV-03292-RED

ORDER

Before the Court are Defendant Wal-Mart Stores East, LP's Motion to Dismiss, Amended Motion to Dismiss, and Suggestions in Support (Docs. 6-8)[1]; Defendant Springfield-Greene County Health Department's Motion to Dismiss and Suggestions in Support (Docs. 16, 17); Plaintiff's Suggestions in Opposition to the Motions to Dismiss (Docs. 18, 19), and Defendants' Replies (Docs. 20, 22). For the reasons discussed herein, Defendants' motions to dismiss are GRANTED IN PART and DENIED IN PART (Docs. 6, 16).

BACKGROUND

Plaintiff Debby Rose alleges Defendants Wal-Mart Stores East, LP (hereinafter "Wal-Mart"), Springfield-Greene County Health Department (hereinafter "SGCHD"), and Cox Health Systems[2] (hereinafter "Cox") discriminated against her by denying her access to various establishments while accompanied by a service animal. In her Petition, Plaintiff claims she suffers from medically

[1] To the extent Wal-Mart's Amended Motion To Dismiss also qualifies as a motion to amend, the motion to amend is granted (Doc. 8).

[2] Cox did not file a motion to dismiss, and Plaintiff's allegations against Cox will not be addressed in this Order.

diagnosable anxiety disorder and agoraphobia, which she claims substantially limits her ability to go out in public without medication. When she does go in public, Plaintiff takes a ten year old Bonnet Macaque monkey, which she claims is trained to perform tasks for her benefit. According to Plaintiff, SGCHD approved the monkey as a service animal in June of 2005 after review of Plaintiff and the animal's medical records. In September of 2006, Plaintiff claims SGCHD directed a number of letters to food service establishments, wherein it instructed the operators not to allow Plaintiff to enter their establishments when accompanied by her monkey. Plaintiff argues she has been improperly denied access to Wal-Mart, Cox, and other establishments while accompanied by her monkey as a direct result of the letters.

Plaintiff seeks recovery under the Americans With Disabilities Act (hereinafter "ADA"), the Civil Rights Act of 1964, and §§ 209 and 213 et seq of the Missouri Revised Statutes. Defendants Wal-Mart and SGCHD moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

LEGAL STANDARD

When considering a motion to dismiss filed pursuant to Rule 12(b)(6), the complaint must be liberally construed, and the facts alleged therein must be taken as true, with all reasonable inferences from those facts being construed in the nonmoving party's favor. *Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008). In order to avoid Rule 12(b)(6) dismissal, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, — U.S. ----, 127 S. Ct. 1955, 1974 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ... a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions," and therefore, "[f]actual allegations must be enough to raise a right to relief above the speculative level

... on the assumption that all the allegations in the complaint are true." *Id.* at 1964-65. In other words, the facts set forth in the complaint must be sufficient to push the claims "across the line from conceivable to plausible." *Id.* at 1974.

ANALYSIS

Without citing any specific statutory provisions in her Petition, Plaintiff broadly alleges violations of entire chapters of the ADA, the Civil Rights Act, the Missouri Human Rights Act, and other Missouri statutory compilations. Since Plaintiff's Petition is unclear as to which specific statutory provisions she is asserting, the Court can only look to the allegations in the Petition in attempt to determine the specific statutory sections which might apply. Plaintiff's Petition focuses entirely on her denial of access to places of public accommodation when accompanied by her monkey. *See* Pet. ¶¶ 17, 19, 25-27, 29-30. With this focus in mind, the Court will individually address the asserted statutory chapters.

I. Federal Claims

Plaintiff advances her federal claims against Wal-Mart and SGCHD under "42 U.S.C. § 12101 et Seq," and "42 U.S.C. § 2000(e) et Seq." *See* Pet. ¶¶ 19, 25.

A. Civil Rights Act

In her Petition, Plaintiff alleges violations of "42 U.S.C. § 2000(e)" of the Civil Rights Act. The Court finds no statutory provision cited as "42 U.S.C. § 2000(e)." The parties said little or nothing in their filings regarding any Civil Rights Act claims, and only SGCHD directly addressed the issue. Assuming Plaintiff meant to state 42 U.S.C. § 2000e, SGCHD argues Plaintiff failed to state any "unlawful employment practice," and therefore failed to state a claim under 42 U.S.C. § 2000e. The Court agrees. Section 2000e deals with equal employment opportunities, and nothing

in the Petition indicates Plaintiff was either employed by or sought employment with Defendants Wal-Mart or SGCHD, much less that these Defendants violated some illegal employment practice. Accordingly, any claims Plaintiff intended to assert against Wal-Mart or SGCHD pursuant to 42 U.S.C. § 2000e are DISMISSED.

Finally, to the extent Plaintiff intended to assert claims against Wal-Mart or SGCHD under 42 U.S.C. § 2000a, those claims are also DISMISSED. Section 2000a states that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation ... without discrimination or segregation *on the ground of race, color, religion, or national origin*." 42 U.S.C. § 2000a(a) (emphasis added). As other courts have noted, the statute is directed solely at discrimination on the grounds of race, religion, color, or national origin. *See Rosado Maysonet v. Solis*, 409 F. Supp. 576, 580 (D. P.R. 1975); *DeCrow v. Hotel Syracuse Corp.*, 288 F. Supp. 530, 532 (N.D.N.Y. 1968) (noting that, based on statutory language, §2000a does not cover sex discrimination). Plaintiff has only alleged claims based on disability discrimination, and § 2000a makes no mention of discrimination on the basis of disability. Accordingly, the Court finds Plaintiff has failed to state a claim under § 2000a against Defendants Wal-Mart and SGCHD (to the extent she intended to assert such claims), and such claims are DISMISSED.

B. Americans With Disabilities Act

Turning to Plaintiff's allegations under the ADA, different provisions will apply to Wal-Mart and SGCHD. Title II of the ADA deals with discrimination on the basis of disability by public entities, while Title III prohibits discrimination on the basis of disability by owners or operators of places of public accommodation. *See Gaona v. Town & Country Credit*, 324 F.3d 1050, 1056 (8th

Cir. 2003). It appears there is no dispute here that under the applicable definitions, SGCHD is a public entity under Title II of the ADA,[3] and Wal-Mart qualifies as a public accommodation under Title III.[4] *See* 42 U.S.C. § 12131; 42 U.S.C. § 12181. However, there is no allegation in the Petition that Wal-Mart would somehow qualify as a "public entity" under Title II, or that SGCHD would qualify as a "public accommodation" under Title III, and therefore any Title II claim against Wal-Mart or any Title III claim against SGCHD is DISMISSED to the extent Plaintiff attempted to allege such claims.

1. ADA Claims Against Wal-Mart

Plaintiff claims Wal-Mart violated Title III of the ADA when it denied her access to its facilities while she was accompanied by her monkey. The ADA outlines in 42 U.S.C. § 12182(a) that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). This subsection of the ADA defines "discrimination" as "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. § 12182(b)(2)(A)(ii). The

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[3] Under 42 U.S.C. § 12131, a "public entity" is defined as "any state or local government," or "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1).

[4] Under 42 U.S.C. § 12181, a "public accommodation" includes a "shopping center, or other sales or rental establishment." 42 U.S.C. § 12181(7)(E).

regulations governing Title III state that "[g]enerally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability." 28 C.F.R. § 36.302(c)(1). However, "[a] public accommodation may impose legitimate safety requirements that are necessary for safe operation," but "safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 C.F.R. § 36.301(b).

Based on 28 C.F.R. § 36.301(b), Wal-Mart argues it was reasonable for it to rely on the Health Department's letter when it refused to allow Plaintiff's monkey into its facility. Wal-Mart further argues that since the denial of access was based on a legitimate concern for public safety, and was undertaken pursuant to specific instructions by SGCHD, it has therefore committed no Title III violation. As support, Wal-Mart points to various case law where Courts have found it reasonable to deny access to service animals where they pose health risks, or where allowing access would violate other law. Reliance on the Health Department's letter may be a good defense, but such a determination is not to be made on a motion to dismiss. While Plaintiff has sufficiently stated a cause of action in her Petition to survive dismissal on this claim, her claim very well may not survive summary judgment. Wal-Mart's motion to dismiss this claim is DENIED.

2. ADA Claims Against SGCHD

Turning to Plaintiff's ADA claims against SGCHD, Plaintiff alleges SGCHD discriminated against her when it sent its letter instructing food establishments to deny her access to their stores when accompanied by her monkey. SGCHD advances a number of arguments in favor of dismissal, including that Plaintiff failed to sufficiently allege a disability, failed to sufficiently plead facts showing her monkey qualifies as a service animal, and failed to allege discrimination by reason of

her alleged disability.

Title II of the ADA outlines that "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied 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. Other Courts have outlined that under this statute, a plaintiff must allege and prove: (1) she is a qualified individual with a disability, (2) she was excluded from the benefits or services of a public entity or otherwise was discriminated against by the public entity, and (3) such exclusion, denial of benefits, or discrimination was because of her disability. *Swenson v. Lincoln County Sch. Dist. No. 2*, 260 F. Supp. 2d 1136, 1144 (D. Wyo. 2003) (citing *Gohier v. Enright*, 186 F.3d 1216, 1219 (10th Cir. 1999)). Because this case involves a service animal, Plaintiff must also allege and prove that her monkey qualifies as a service animal. ADA regulations currently define a service animal as "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items." 28 C.F.R. § 36.104.

Plaintiff claims in her Petition that she is a qualified individual with a disability. Specifically, Plaintiff claims she suffers from "medically diagnosable anxiety disorders and agoraphobia." The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual." 42 U.S.C. § 12102(2)(A). Plaintiff claims her condition limits her ability "to go out in public without medication," and as a result, she is "significantly restricted as to the condition, manner and duration" under which she can perform

basic life activities outside the home. While the Court notes that limitation of a "major life activity" is a relatively stringent criterion to qualify as disabled under the ADA,[5] for purposes of ruling on a motion to dismiss, Plaintiff has sufficiently pleaded a disability under the ADA.

Turning to the second prong of the standard, Plaintiff also alleges SGCHD discriminated against her when it instructed food establishments to disallow her monkey access to their facilities. The ADA teaches that a public accommodation generally must modify procedures to allow for the use of a service animal absent actual and legitimate safety concerns. *See* 28 C.F.R. § 36.302(c)(1); 28 C.F.R. § 36.301(b); 28 C.F.R. § 35.130(b)(7). By alleging SGCHD instructed places of public accommodation to deny her entry while accompanied by her alleged service animal (assuming the monkey qualifies), Plaintiff has alleged a plausible claim that SGCHD subjected her to discrimination under the ADA. Therefore, based on the contents of the pleadings, the Court finds Plaintiff has sufficiently pleaded the first two prongs of the standard.

SGCHD's primary challenge to Plaintiff's Petition is whether she sufficiently stated the third prong of the standard, namely whether she alleged SGCHD discriminated against her "because of her disability." While Plaintiff does not directly state SGCHD's actions were undertaken "because of her disability," it appears her allegations against SGCHD are nonetheless sufficient to survive Rule 12(b)(6) dismissal.

A plaintiff may demonstrate actions were undertaken by reason of an alleged disability under one of two methods: (1) allege (and later offer the necessary evidence) that her disability was actually considered by SGCHD in formulating and implementing its instruction to food service

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[5] The Supreme Court has outlined certain "major life activities" that qualify under the ADA, including "walking, seeing, hearing," and "performing manual tasks." *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 195 (2002).

establishments to deny her access to their facilities when she is accompanied by her monkey, or (2) allege (and later show) that SGCHD could have reasonably modified its animal control policy to accommodate the disability, but refused to do so. *McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 460 (6th Cir. 1997); *Access Now, Inc. v. Town of Jasper, Tenn.*, 268 F. Supp. 2d 973, 980 (E.D. Tenn. 2003). Plaintiff asserted the second method in her Petition. ADA statutes and regulations discuss the benefit of access with a service animal in terms of "reasonable modifications" to policies and procedures. *See* 42 U.S.C. § 12182(b)(2)(A)(ii) (describing "discrimination" as "a failure to make reasonable modifications in policies, practices, or procedures"); 28 C.F.R. § 36.302(c)(1) (noting "a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability"); 28 C.F.R. § 35.130(b)(7). By alleging she was denied access when accompanied by her service animal, Plaintiff is essentially alleging SGCHD failed to make reasonable modifications to its animal control policy.[6] Such an allegation, when accepting as true Plaintiff's assertions that she is a qualified individual with a disability and her monkey is a qualified service animal, satisfies the second method for alleging SGCHD's action was undertaken "because of a disability." Plaintiff has therefore sufficiently pleaded the third prong of a Title II cause of action.

Finally, the Court also finds that Plaintiff has sufficiently pleaded facts indicating her

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[6] The regulation addressing service animals discusses a "public accommodation" making the modification to allow access to a service animal. However, a public entity has the same legal obligation as a public accommodation to make reasonable modifications to policies or procedures to allow service animals when necessary to avoid discrimination on the basis of disability. *See* 28 C.F.R. § 35.130(b)(7). Moreover, while SGCHD is a "public entity" and not a "public accommodation," Plaintiff alleged SGCHD instructed places of public accommodation to violate the regulation by denying her access. Instructing a public accommodation to deny access would, if true, subject Plaintiff to discrimination by that public accommodation, and subjecting a disabled individual to discriminatory practice qualifies as a violation of Title II by a public entity.

monkey could plausibly qualify as a service animal under *current* ADA regulations.[7] As the current regulation states, a service animal could be "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability." 28 C.F.R. § 36.104. By using the phrase "or other animal," the current regulation contemplates the possibility of a service animal other than a dog. The key to such a determination is whether the animal is individually trained to "do work or perform tasks" for the disabled individual. *Id.* In her Petition, Plaintiff alleges her monkey is "trained to provide assistance to her." *See* Pet. ¶ 16-17. Although she does not outline what work or assistance the monkey is trained to provide for her, Plaintiff's assertion is sufficient to plausibly establish that her monkey could qualify as a service animal under the ADA. Having sufficiently pleaded plausible facts outlining all parts of the relevant ADA provisions, the Court finds Plaintiff has sufficiently stated a claim under Title II against SGCHD so as to survive dismissal pursuant to Rule 12(b)(6).

While the Court's ruling allows Plaintiff to proceed on her claim, the Court notes there are certain situations where denying access to a service animal would not violate the ADA, and some of those situations may be in play in this case. In its motion to dismiss, SGCHD challenges whether Plaintiff qualifies as an individual with a disability, challenges whether her monkey performs any tasks such that it qualifies as a service animal, and argues its instruction to deny the monkey access

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[7] The Court emphasizes the term "current" because the Department of Justice recently initiated rulemaking regarding service animals, and a number of the proposed changes could have a direct impact on Plaintiff's case. One of the proposed changes would amend the definition of service animal to clarify "that 'service animal' does not include wild animals (including nonhuman primates born in captivity)." *See* Nondiscrimination on the Basis of Disability in State and Local Government Services, 73 Fed. Reg. 34466, 34477, 2008 WL 2413718 (June 17, 2008) (to be codified at 28 C.F.R. pt. 35). If a monkey does not qualify as a service animal, then Plaintiff's Petition fails to state a claim. Other provisions in the proposed rulemaking would clarify certain differences between service animals and therapy animals or pets, which also could play a role in this case. Until such rulemaking actually becomes law, the Court continues to operate under the current regulatory defintion, which leaves open the possibility that a monkey could possibly qualify as a service animal if properly trained to perform uniquely beneficial tasks for an individual with a disability.

was undertaken pursuant to legitimate health and safety concerns. Any of these arguments, if true, could remove Plaintiff's claims from the ADA's protective umbrella.[8] At this stage, however, the Court must judge the sufficiency of the pleading when taking the allegations in the complaint as true. To the extent Plaintiff is a qualified individual with a disability, and to the extent her monkey qualifies as a service animal, she enjoys certain protections under the ADA. Among those privileges is the benefit of reasonable access with her service animal (absent any legitimate health and safety concerns). Denying a qualified individual with a disability access to places of public accommodation when that person is accompanied by a bona fide service animal, without a legitimate reason to limit such access, could arguably constitute discrimination by reason of that individual's disability. Whether SGCHD's actions subjected Plaintiff to discrimination by failing to offer reasonable modifications to animal control policies, or whether its actions were undertaken in furtherance of reasonable and legitimate reasons, cannot be determined based solely on the motion before the Court. *See Day v. Sumner Reg'l Health Sys., Inc.*, 2007 WL 4570810, at *3 (M.D. Tenn. 2007) (denying motion to dismiss ADA claims where service animal was denied access to rooms in hospital because the animal was "extremely unclean," and noting a determination of whether denial of access was reasonable cannot be made at motion to dismiss stage) . SGCHD's motion to dismiss is DENIED.

II. Missouri State Law Claims

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As an example, a service animal may be denied access under certain circumstances when legitimate health and safety concerns are involved. *See, e.g., Pool v. Riverside Health Serv., Inc.*, 1995 WL 519129, at *5 (D. Kan 1995). There is some discussion in the briefing that health and safety concerns played a role in denying the monkey access to food establishments. However, the Court cannot determine at this time how much of a role health concerns played in the decision as opposed to some other potentially improper motivation. Similarly, SGCHD's assertion that Plaintiff's monkey does not qualify as a service animal cannot be determined at this juncture, but may be an issue that arises later. *See supra* note 7.

In addition to her federal claims, Plaintiff also alleges Wal-Mart and SGCHD violated "the provisions of Chapter 213 and 209.150 RSMo et Seq." of the Missouri Revised Statutes. Again, the focus of the alleged violations must be kept in mind, which is that Wal-Mart and SGCHD discriminated against Plaintiff when they denied her access to places of public accommodation while accompanied by her monkey. Based on the Court's review of the cited statutory chapters, the only possibly relevant Missouri statutes within the asserted chapters are MO. REV. STAT. §§ 213.065(1) and 213.065(2), and MO. REV. STAT. §§ 209.150(2) and 209.150(3). Of these statutory sections, only § 209.150(3) makes any mention of a right to be accompanied by a service animal.

Beginning with Plaintiff's allegations under MO. REV. STAT. §§ 209.150(2) and 209.150(3), the Court finds Plaintiff failed to state a claim against either Wal-Mart or SGCHD under these companion sections. Section 209.150(2) states in pertinent part that "[e]very person with a visual, aural or physical disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all ... places of public accommodation ... and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons." MO. REV. STAT. § 209.150(2). Section 209.150(3) elaborates on § 209.150(2) by noting that "[e]very person with a visual, aural, or physical disability *shall have the right to be accompanied by a guide dog, hearing dog, or service dog,* which is especially trained for the purpose, in any of the places listed in subsection 2 of this section without being required to pay an extra charge." MO. REV. STAT. § 209.150(3) (emphasis added). These statutes afford a disabled individual the privilege to be accompanied by a service dog, but the provisions do not mention a right to be accompanied any other type of service animal. Since Plaintiff only alleged Wal-Mart and SGCHD denied her entry while accompanied by a monkey, she has failed to allege of a violation

of these statutory sections as written.

Turning to the asserted sections of the Missouri Human Rights Act, §§ 213.065(1) and 213.065(2) of the MHRA are similar to the ADA in that they deal with discrimination on the basis of disability. *See* MO. REV. STAT. § 213.065(1); MO. REV. STAT. § 213.065(2). However, unlike the provisions of the ADA, the Court finds nothing in the asserted sections of the MHRA discussing service animals, and more importantly for the present circumstances, nothing indicating the MHRA contemplates a right to be accompanied by a service animal other than a dog. Since Plaintiff has not directed the Court to any statutory provision, regulation, or case law indicating the MHRA affords a right to a disabled individual to be accompanied by a service animal other than a dog, the Court finds Plaintiff failed to state a claim against either Wal-Mart or SGCHD under the MHRA.

Plaintiff argues the ADA, which seemingly contemplates a broader range of potential service animals than just dogs, preempts the Missouri statutes. Plaintiff further argues that by virtue of preemption, she should be able to proceed on her Missouri state law claims using the ADA regulations' broader definitions. By advancing such an argument, Plaintiff essentially concedes her allegations do not state a claim under the Missouri statutes as written. The Court makes no ruling on whether the ADA preempts the Missouri statutory sections at issue, and need make no such ruling to properly dismiss Plaintiff's claims. To the extent Plaintiff is correct that the ADA preempts the Missouri statutes, the preemption would not mean the Missouri law is violated by utilizing the ADA regulations' definitions instead. *See Green v. Hous. Auth. of Clackamas County*, 994 F. Supp. 1253, 1257 (D. Or. 1998) (finding state law requiring a hearing dog to be on an orange leash was preempted by federal law, and therefore, though federal law was violated in the case, there was no violation of the preempted state law). If the Missouri statutes were preempted, Plaintiff's recovery

would remain under the ADA. Plaintiff has advanced the appropriate claims under the ADA in this lawsuit, and those claims will be given their full and due consideration.

Wal-Mart and SGCHD's motions to dismiss the state law claims are GRANTED, and Plaintiff's state law claims against Wal-Mart and SGCHD are DISMISSED. All other asserted grounds for dismissal not addressed herein are denied as moot.

III. Springfield - Greene County Health Department As Defendant

One of the arguments SGCHD asserts in its motion to dismiss is that it is an administrative department of the City of Springfield, and as such, it does not have the legal capacity to sue or be sued. Plaintiff argues Title II of the ADA allows her to proceed against public entities, including departments and agencies of state or local government, and therefore she should be allowed to proceed on all claims against SGCHD. In the alternative, Plaintiff requests the Court allow her to amend her Petition to name the City of Springfield instead. While the City of Springfield is apparently the real party in interest here, Plaintiff is correct that Title II allows her to proceed against agencies of local government. *See* 42 U.S.C. § 12131(1)(B); 42 U.S.C. § 12132. Since the Court has dismissed all claims against SGCHD except the Title II claim, SGCHD's motion to dismiss on such grounds is DENIED. However, given that SGCHD is merely an administrative arm of the City of Springfield, Plaintiff may amend her Petition to name the City of Springfield if she desires.

CONCLUSION

For the foregoing reasons, Defendant Wal-Mart Stores East, LP's Motion to Dismiss (Docs. 6, 8), and Defendant Springfield-Greene County Health Department's Motion to Dismiss (Docs. 16) are GRANTED IN PART and DENIED IN PART. Said motions are GRANTED as to all Plaintiff's Missouri state law claims, and as to all stated claims pursuant to 42 U.S.C. § 2000a *et seq*. The

motions are DENIED as to Plaintiff's ADA claims. All Plaintiff's Missouri state law claims and claims pursuant to 42 U.S.C. § 2000a *et seq* against Wal-Mart and SGCHD are DISMISSED.

IT IS SO ORDERED.

DATED: December 4, 2008

/s/ Richard E. Dorr
RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT