J.G. v. Rochester Bd. of Ed.
CW-NY-002-001

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

J. G., by his mother and next friend, Mrs. G.; M. W., by her mother and next friend, Mrs. W.; A. M., by his mother and next friend, Mrs. M., and K. M., by her mother and next friend, Mrs. M; on behalf of themselves and all persons similarly situated,

Plaintiffs,

-vs-

THE BOARD OF EDUCATION OF THE ROCHESTER CITY SCHOOL DISTRICT; JOHN DELVECCHIO, ARCHIE CURRY, FRANK WILLIS, IRENE FRUSCI, JOSEPHINE GENOVESE, KAREN GRELLA, and GARY SMITH, individually and in their official capacities as members of the Board of Education of the Rochester City School District; LAVAL M. WILSON, in his official capacity as Superintendent of the Rochester City Schools; BERNARD S. GREENBERGER, individually and in his official capacity as Director of the Department of Special Education of the Rochester City Schools; ROBERT LAYS, individually and in his official capacity as Assistant Director of the Department of Special Education of the Rochester City Schools; JOSEPH SALEMI, individually and in his official capacity as Assistant Director of the Department of Special Education of the Rochester City Schools; THE NEW YORK STATE DEPARTMENT OF EDUCATION; and GORDON M. AMBACH, in his official capacity as Commissioner of the New York State Education Department,

Defendants.

Civil Action No. 81-173 (C)

CLASS ACTION COMPLAINT

(Jury trial demanded)

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief and damages brought by four handicapped students in the Rochester

City School District on behalf of themselves and all students similarly situated to challenge the District's failure to provide them with a free, appropriate public education designed to meet their special needs. Plaintiffs allege that the practices and policies of the Rochester City School District and its agents and employees (hereinafter referred to collectively as the "City defendants") with regard to evaluation, classification and placement of handicapped students in appropriate educational programs violate their rights under:

(a) the Education of All Handicapped Children Act, 20 U.S.C. §§1401 et seq., and the accompanying regulations at 34 C.F.R. Part 300;

(b) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the accompanying regulations at 34 C.F.R. Part 104;

(c) the Fourteenth Amendment to the United States Constitution;

(d) the Civil Rights Act of 1871, 42 U.S.C. §1983; and

(e) Article 89 of the New York Education Law and accompanying regulations at 8 NYCRR Part 200.

Plaintiffs allege that the New York State Department of Education and its agents and employees (hereinafter collectively referred to as the "State defendants") have failed to ensure that all handicapped children in the District are located, evaluated and provided with a free, appropriate public education and that appropriate procedural safeguards are available to District students, in violation of the requirements of the Education of All Handicapped Children Act, 20 U.S.C. §1401 et seq. and accompanying regulations at 34 C.F.R. Part 300, and §4402 of the New York Education Law.

Plaintiffs and the class seek declaratory and injunctive relief against all defendants' continuing violations of federal and state law. The named plaintiffs also seek damages pursuant to 42 U.S.C. §1983 for physical and emotional harm caused by the City defendants' violation of their federal statutory and constitutional rights.

JURISDICTION

2. Jurisdiction over plaintiffs' claims is conferred upon this Court by 28 U.S.C. §§1331, 1343(3), and 1343(4) and 20 U.S.C. §1415(e)(4). Plaintiffs' request for declaratory relief is authorized by 28 U.S.C. §§2201 and 2202. The Court has jurisdiction over the plaintiffs' state law claims by virtue of the doctrine of pendent jurisdiction.

3. The named plaintiffs and the members of the plaintiff class and subclass are suffering immediate and irreparable harm from defendants' actions, omissions, practices and policies complained of herein and will continue to suffer such harm unless defendants are enjoined and restrained as prayed for below. Plaintiffs have no adequate remedy at law.

CLASS ACTION ALLEGATIONS

4. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, plaintiffs bring this action on behalf of themselves and a class composed of all other students in the Rochester City School District (hereinafter "CSD") who have been identified as possibly in need of special education and related services by any of the following means:

(a) An oral or written referral for evaluation made by an agent or employee of the CSD to a school administrator, an evaluation team, or to the Committee on the Handicapped;

(b) An oral or written request for evaluation made by an agent or employee of the CSD or any other interested person to any other agent or employee of the CSD;

(c) An oral or written request for evaluation and/or provision of a special program made by the child's parent to any agent or employee of the CSD.

5. Plaintiffs also seek to represent a subclass composed of all students in the CSD who have been identified as handicapped by any of the following means:

(a) Oral or written notification of the students' parent by an agent or employee of the CSD that the student has been found to have a handicapping condition;

(b) Placement of the student in a special education program of the CSD or provision to the student with special education services by the CSD;

(c) Obtaining from the student's parent a "consent" to a handicapped classification and proposed placement by an agent or employee of the CSD;

(d) Determination by a CSD Special Educational Services team (hereinafter "SES team") that the student has a handicapping condition.

6. The prerequisites to a class action enumerated in Rule 23(a) of the Federal Rules of Civil Procedure are satisfied in this case.

7. On information and belief, the class and subclass are so numerous that joinder of all members is impracticable.

8. On information and belief, there are over 35,000 children presently enrolled in the CSD.

9. On information and belief, over 4,000 of the children presently enrolled in the CSD have been identified as handicapped or potentially handicapped by the City defendants.

10. On information and belief, over 500 children enrolled in the CSD were identified as possibly in need of special education and related services and/or were referred for evaluation between September, 1980 and February 1981.

11. There are substantial questions of law and fact presented in this action which are common to all members of the class and subclass. With regard to the class, these questions include:

(a) Have the City defendants failed to develop and implement a procedure for identifying, locating and evaluating students thought to be handicapped which ensures that such students will be evaluated and classified within thirty days of referral?

(b) Do the City defendants place students in special education programs or determine that students are not handicapped without performing full individual evaluations meeting the requirements of federal and state law?

(c) Have the City defendants failed to develop and implement procedures for obtaining parental consent meeting the requirements of federal and state law prior to evaluation?

(d) Have the City defendants failed to develop and implement procedures for giving parents notice when they intend to find that a student is not handicapped which meet the requirements of federal and state law?

(e) Do the City defendants remove students from their current educational placements and/or refuse to enroll students in school during the pendency of evaluation and placement proceedings?

(f) Have the State defendants failed to ensure that the City defendants have established and implemented identification, referral and evaluation procedures and procedures for notification of parents of special education decisions meeting the requirements of federal and state law?

With regard to the subclass, these questions include:

(g) Do the City defendants fail to place students with handicapping conditions in appropriate educational programs within 30 days of their classification as handicapped students?

(h) Do the City defendants fail to develop individualized education programs for handicapped students in the manner and within the time limits prescribed by federal and state law?

(i) Do the City defendants fail to provide handicapped students and their parents with written notice prior to any proposal or refusal to change or initiate such students' special education program as mandated by federal and state law?

(j) Do the City defendants fail to provide handicapped students with nonacademic and extracurricular services and activities and physical education in a manner which affords them equal opportunity for participation in such activities?

(k) Do the City defendants afford parents of handicapped students who complain about their child's classification or placement with impartial due process hearings as required by federal and state law?

(l) Do the City defendants misinform parents of handicapped students as to the availability of private and residential placements and fail to make such placements available to handicapped students who require them?

(m) Have the State defendants failed to insure that the City defendants properly develop and implement individualized education programs for each handicapped

child, provide each handicapped child with an appropriate education program in a timely manner, and establish and implement procedural safeguards meeting the requirements of federal and state law?

12. The claims of the plaintiffs are typical of the claims of the class and subclass and predominate over any questions affecting only individual members.

13. The named plaintiffs are presently in need of or will in the future need appropriate, individualized special education and related services, prompt, appropriate, evaluation and re-evaluation when indicated, full and adequate notice prior to changes in their placement or programs, prompt appropriate placement when indicated, and properly developed and implemented individualized education programs on a regular basis. They will fairly and adequately protect the interests of the class and subclass, and, in supporting their own claims, will simultaneously advance the claims of other class and subclass members. Plaintiffs are represented by counsel experienced in civil rights and class action litigation.

14. Plaintiffs bring this action under Rule 23(b)(2) of the Federal Rules of Civil Procedure because the City and State defendants have acted or refused to act on grounds generally applicable to the class and subclass, thereby making injunctive and declaratory relief appropriate with respect to the classes as a whole.

PARTIES

15. Plaintiff J. G. is an eighteen-year-old citizen of the United States who presently resides in the Rochester Psychiatric Center, Rochester, New York. This action is brought on his behalf by his mother, Mrs. G., who acts as his next friend for purposes of this litigation. Mrs. G. resides at 224 Morton Street, Rochester, New York. J. G. and Mrs. G. bring this action anonymously to avoid invasion of their privacy. Their true names will be filed under seal with this Court.

16. Plaintiff M. W. is a sixteen-year-old citizen of the United States who resides with her mother at 120 Avenue D, Rochester, New York. Her mother and next friend, Mrs. W., brings this action on her behalf. M. W. and Mrs. W. bring this action anonymously to avoid invasion of their privacy. Their true names will be filed under seal with this Court.

17. Plaintiff A. M. is a fourteen-year-old citizen of the United States who resides with his mother at 1552 St. Paul Street, Rochester, New York. His mother and next friend, Mrs. M., brings this action on his behalf. A. M. and Mrs. M. bring this action anonymously to avoid invasion of their privacy. Their true names will be filed under seal with this Court.

18. Plaintiff K. M. is a nine-year-old citizen of the United States who resides with her mother at 1552 St. Paul Street, Rochester, New York. Her mother and next friend, Mrs. M., brings this action on her behalf. K. M. and Mrs. M. bring this action anonymously

to avoid invasion of their privacy. Their true names will be filed under seal with this Court.

19. The Board of Education of the Rochester City School District (hereinafter "the Board") is a body corporate charged with the duty to operate and manage the educational affairs of the City School District in compliance with federal and state law. Among other duties the Board is responsible for providing a free, appropriate education to all handicapped students of the District. It is a "local educational agency" as that term is defined in 20 U.S.C. §1401(8). For this purpose, and for the operation of its other educational programs and activities, the Board receives federal financial assistance.

20. Defendants John DelVecchio, Archie Curry, Irene Frusci, Josephine Genovese, Frank Willis, Karen Grella and Gary Smith are the duly elected members of the above-described Board of Education and are charged with carrying out the duties of the Board. They are sued both individually and in their official capacities.

21. Defendant Laval M. Wilson is Superintendent of Schools of the CSD. He is the chief executive officer of the Board, and, in this capacity, he is statutorily charged with the duty of enforcing all provisions of law and all rules and regulations relating to the management of schools and other educational activities under the Board's direction. He is sued in his official capacity.

22. Defendant Bernard S. Greenberger is Director of the Department of Special Education for the CSD. In this capacity he is responsible for providing a free, appropriate public education to

all handicapped students of the District, in accordance with both federal and state laws and regulations. Defendant Greenberger is also Chairman of the CSD Committee on the Handicapped. In this capacity he is responsible for identification, classification and placement of all handicapped children within the District. He is sued both individually and in his official capacity.

23. Defendant Robert Lays was at all times relevant hereto an Assistant Director of the Department of Special Education for the CSD. In this capacity he was responsible for providing a free, appropriate public education to handicapped students of the District in accordance with both federal and state laws and regulations. He is sued individually and in his official capacity.

24. Defendant Joseph Salemi was at all times relevant hereto anAssistant Director of the Department of Special Education for the CSD. In this capacity he was responsible for providing a free, appropriate public education to handicapped students of the District, in accordance with both federal and state laws and regulations. He is sued individually and in his official capacity.

25. Defendant New York State Education Department is a state agency charged with general management and supervision of all public schools and all educational activity in the State of New York. It is a "State educational agency" as that term is defined in 20 U.S.C. §1401(7). As such it is responsible for assuring that all educational programs for handicapped children within the state are administered in compliance with federal and state laws. It is a recipient of federal funds for various educational programs, in-

cluding funds made available for special education programs and related services.

25a. Defendant Ambach is the Commissioner and chief executive officer of the New York State Education Department. In this capacity he is responsible for assuring that all educational programs for handicapped children within the state are administered in compliance with federal and state laws. He is sued in his official capacity.

STATUTES INVOLVED

26. The Education of All Handicapped Children Act, 20 U.S.C. §§1401, et seq. (hereinafter referred to as the "EAHCA") requires that all school districts which receive funds under the Act take affirmative steps to identify, locate, evaluate and place in appropriate educational programs all handicapped children in their district. Such children must be provided with a free, appropriate public education, at no cost to the parents, in the least restrictive educational environment appropriate to the needs of the child.

27. The EAHCA and the accompanying regulations set up a detailed mechanism for ensuring that each handicapped child's program is individually designed to meet his/her particular needs and to ensure maximum parental input and involvement at every stage of the process. The regulations require, inter alia:

(a) notice to parents and parental consent when evaluative information is being sought regarding a child thought to be handicapped;

(b) extensive evaluations by a multidisciplinary team of professionals, including testing in the area of the child's suspected disability;

(c) the opportunity for a child's parent to meet with the multidisciplinary team prior to their making a recommendation as to the child's classification or placement;

(d) written notification of parents when a school district proposes to initiate or change or refuses to initiate or change a child's special education placement, based on the evaluations conducted, including:

i. a full explanation of all the procedural safeguards available to parents under the Act (see (e) below);

ii. a description and explanation of the proposed action or refusal to act;

iii. a description of any other options considered by the agency and why they were rejected;

iv. a description of each evaluation procedure, test, record or report used as a basis for the proposed action or inaction; and

v. a description of any other relevant factors considered by the agency in making its recommendation.

(e) extensive procedural safeguards, including:

i. the right to an independent evaluation at public expense if the parent disagrees with the agency's evaluation;

ii. the right to an impartial due process hearing if the parent disagrees with the proposed classification or placement, including the right to counsel, the right to present evidence, cross-examine witnesses and compel the attendance of witnesses, the right to have all evidence proposed to be used by the agency disclosed five days in advance of the hearing, the right to a decision within 45 days of the request for a hearing;

iii. the right to appeal the hearing officer's decision to the State educational agency;

iv. the right to bring a civil action in federal or state court to challenge the decision of the State educational agency;

v. the right to have the child remain in his/her then-current educational placement, or, if applying for initial admission to a school, to be admitted, pending the final resolution of any administrative and/or judicial proceedings;

(f) development, with parental involvement, of an individualized education program (hereinafter "IEP") for each handicapped child, which must be in place before the child is placed in a special educational program, and which must include, inter alia, a description of the specific programs and services to be provided to the child;

(g) creation of a continuum of alternative placements sufficient to provide for the needs of all handicapped students in the District; and

(h) provision of a scope and range of nonacademic services and activities, including physical education, equivalent to those provided to nonhandicapped students.

28. The EAHCA also creates substantial monitoring and enforcement duties for the State education agency and makes that agency ultimately responsible for the provision of a free appropriate education to every handicapped child in the State.

29. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (hereinafter "Section 504"), states that no otherwise qualified handicapped individual may, by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

30. Section 504 and its implementing regulations adopt and incorporate the EAHCA procedures and requirements set forth above as a means of ensuring that educational agencies do not discriminate against students on the basis of handicap.

31. Article 89 of the New York Education Law and the accompanying Commissioner's Regulations at 8 NYCRR, Part 200 incorporate the substantive and procedural requirements of the EAHCA enumerated above. The regulations also set forth specific time limits which must be observed by school districts when a referral for evaluation and placement has been made. These time limits require:

(a) the multidisciplinary team making the evaluations and recommendations (known in New York as the district's Committee on the Handicapped or COH) must make a determination of eligibility and classification for placement within thirty days of receipt of a referral;

(b) actual placement of a handicapped child in the appropriate educational program must occur within an additional thirty days.

32. The New York regulations also provide that a district may create subcommittees of the COH to perform the duties of the COH. Such subcommittees must be similarly constituted to the COH, including as members at least a school psychologist, a teacher or administrator of special education, a school physician, and a parent of a handicapped child residing in the school district. This composition of the COH or one of its subcommittees is mandated by federal law.

FACTUAL ALLEGATIONS

FACTS PERTAINING TO THE INDIVIDUAL PLAINTIFFS

PLAINTIFF J. G.

33. J. G. is an eighteen-year-old seriously emotionally disturbed student who has been hospitalized on several occasions during the past two-and-one-half years for chronic paranoid schizophrenia.

34. J. G. was hospitalized for the first time in August, 1978, when he was admitted to Strong Memorial Hospital in Rochester, New York.

35. In approximately September, 1978, J. G.'s physicians informed the CSD of his hospitalization and diagnosis and requested that he be given instruction at the hospital.

36. On or about October 24, 1978 the CSD assigned a Special Education tutor to J. G. A copy of the letter evidencing this assignment is attached hereto and incorporated herein by reference as plaintiffs' Exhibit "A".

37. Prior to the initiation of this Special Education program, the CSD performed no evaluations, gave no written notice to J. G.'s parent of his proposed classification, and did not develop an IEP for him.

38. In early 1979, after his discharge from Strong Memorial Hospital, J. G. attempted to re-enroll in East High School, his home school in the CSD.

39. At this time J. G. was informed that he could not return to East High School until he had undergone evaluation by the school psychologist; instead J. G. was assigned to a recreational vehicles

vocational program at the Whitney Street Annex.

40. Subsequently a school psychologist determined that J. G.'s mental health would not allow his return to East High School; instead a plumbing class was added to his schedule and he received tutoring three to five days per week for approximately one hour each day.

41. Prior to the initiation of this new program, J. G. and his mother were never informed that he had the right to enroll in his regular school while any evaluations were completed. No classification and recommendation for placement was made by the COH, no notice was sent and no IEP was developed with parental input.

42. At the time he was placed in the plumbing class, J. G. had no desire to receive training in plumbing. He accepted this placement, and attended school sporadically, because CSD employees told him it was the only available program.

43. In March, 1979, J. G.'s condition deteriorated, and he was rehospitalized at Strong Memorial Hospital until April, 1979. Upon discharge from Strong, J. G. again resumed limited vocational education and tutoring three times each week.

44. In June, 1979 a CSD Student Educational Services team reviewed J. G.'s placement and determined he should continue to receive vocational instruction and tutoring. On information and belief, this SES team was not a properly constituted subcommittee of the Committee on the Handicapped, nor did it refer J. G. to the COH or a subcommittee of the COH. On information and belief, the SES team

made no attempt to evaluate J. G. prior to making this recommendation, nor did they meet with his parent. The notification sent to J. G.'s mother did not inform her in sufficient detail of the procedural safeguards available to her under the EAHCA or specify which evaluations, tests, records or reports were used in reaching their decision. No IEP planning conference was scheduled and no IEP was developed with parental input.

45. During the 1979-80 school year J. G. attended one class at Edison High School (which replaced the Whitney Street Annex) five days per week and received tutoring at Edison for one hour, five times each week.

46. In October, 1979 J. G. was dropped from one of his vocational courses and enrolled in another vocational program without SES or COH involvement and without any written notice to his parent.

47. Although J. G. had requested placement in a regular physical education class, from the time of his first discharge from Strong Memorial Hospital until February, 1980, the City defendants refused to provide him with any form of physical education.

48. As the result of defendant's failure to provide J. G. with an appropriate educational environment, he refused to attend school and his condition deteriorated to the point where he required hospitalization.

49. In approximately November, 1979, J. G.'s mother, realizing that her son's condition was deteriorating, asked J. G.'s

counselor whether the CSD would pay for J. G.'s residential placement. After consulting with a CSD psychologist, the counselor informed her that it was not CSD policy to pay for residential placement.

50. In January, 1980, J. G.'s deterioration necessitated his re-admission to Strong Memorial Hospital, and in February he was admitted to the Youth Division of Rochester Psychiatric Center, a state hospital for mentally ill people.

51. J. G.'s mother notified his counselor that J. G. had been rehospitalized and requested that tutoring be continued at the Psychiatric Center.

52. In April, 1980 J. G.'s mother received a letter from Joseph Salemi, Assistant Director of the CSD Special Education Department, indicating that the CSD would not continue to provide a tutor while her son was institutionalized. A copy of this letter is attached hereto and incorporated herein by reference as plaintiffs' Exhibit B.

53. As a result of the City defendants' failure to continue his tutoring J. G. did not receive appropriate educational services from March through June, 1980.

54. In approximately April, 1980, J. G.'s treating physicians recommended his educational placement at a residential school. On information and belief the City defendants were informed of this recommendation but they never acted upon it.

55. During the period complained of herein, the City defendants did not refer J. G. to the COH or one of its subcommittees for

classification as a handicapped student. They did not notify J. G.'s mother of her right to request a due process hearing each time she complained about her son's educational placement.

56. During the period complained of herein, the City defendants did not give J. G.'s mother written notice prior to initiating each change in his educational program. They at no time developed an IEP for J. G. with appropriate parental input.

57. During the summer of 1980, J. G.'s mother sought assistance from the Monroe County Youth Advocacy Project. With the assistance of an advocate, she requested re-evaluation of J. G.'s condition and a meeting with the COH concerning his classification and placement.

58. In September, 1980, J. G., through his mother, filed an administrative complaint with the Office of Special Education, United States Department of Education, in which she challenged the CSD's failure to grant J. G. rights arising under the Education of All Handicapped Children Act, 20 U.S.C. §§1401 et seq. No final action has been taken on this complaint.

59. As a result of Mrs. G.'s vigorous protests concerning the CSD's failure to comply with the EAHCA to federal and state agencies and to her legislators, and as a result of the active involvement in her case of her advocate, the City defendants are presently attempting to provide J. G. with educational services in compliance with legal requirements. However, J. G. has already suffered a serious and irremediable loss of educational opportunities, as well as emotional distress and deterioration in his condition as a result of the City defendants' failure to provide him with appropriate educational services.

PLAINTIFF M.W.

60. Plaintiff M. W. is a visually-impaired sixteen-year-old girl. She is blind in one eye and with best correction, has visual acuity of 20/50 in her better eye. Her impairment stems from a congenital cataract condition. Furthermore, various tests have indicated M. W. has an emotional handicap and that she is mentally retarded.

61. During her early years in the CSD schools, M. W. was in special classes for visually-impaired students.

62. On or about May 17, 1978 M. W.'s mother, Mrs. W., consented to placement of her daughter in a classroom for emotionally handicapped children. Prior to consenting to this placement Mrs. W. received no written notice from the CSD.

63. At the meeting during which Mrs. W. consented to placement, members of the CSD Special Needs Committee (predecessor of the SES team) explained her daughter's need for special education. Mrs. W. signed an otherwise blank form indicating that she consented to the proposed placement. Mrs. W. was not informed that her consent was revocable, nor was she informed of her daughter's rights as a handicapped student.

64. On information and belief, neither the COH nor its subcommittee reviewed M. W.'s proposed classification or placement because the Special Needs Committee never referred her to the COH.

65. M. W. was not placed in a classroom for emotionally handicapped children until October 5, 1978.

66. From May, 1978 until at least October, 1978 Mrs. W. was not informed of her daughter's right to be placed in an appropriate educational program within thirty days after identification as a handicapped child.

67. M. W. attended an emotionally handicapped class at Frederick Douglass Junior High School from October, 1978 until May, 1979, when her family moved to Potsdam, New York. M. W.'s family returned to Rochester in August, 1979.

68. In September, 1979 Mrs. W. requested that M. W. be re-enrolled in an emotionally handicapped class in the CSD.

69. Mrs. W. requested placement at East High School, M. W.'s home school, or at Frederick Douglass Junior High School. Her request was denied by defendant Robert Lays because both programs were filled. Instead, defendant Lays offered M. W. a placement in another emotionally handicapped class, farther from her home, which was already filled to capacity with ten boys. Mrs. W. informed defendant Lays that the proposed placement was unacceptable because the school was not a neighborhood school and because she did not think her daughter would adjust to a class in which she was the only girl. Defendant Lays informed Mrs. W. that he would seek another placement for M. W.

70. At no time did defendant Lays inform Mrs. W. of her daughter's right to contest the proposed placement, of her right to return to her last educational placement pending resolution of the matter, or of her other due process rights. At no time did defendant

Lays initiate a hearing or inform Mrs. W. of how she could request a hearing to contest the proposed placement.

71. On information and belief, defendant Lays took no affirmative action to place M. W. in an appropriate educational program until March, 1980.

72. M. W. remained at home without receiving any educational services for the entire 1979-80 school year.

73. In March, 1980, Mrs. W., frustrated by defendants' failure to place her daughter in an emotionally handicapped class, consented to M. W.'s declassification as a handicapped student and to her placement in the Achievement Program, a program for slow learners who are not considered handicapped.

74. Mrs. W. received no written notice from the CSD prior to consenting to M. W.'s placement in the Achievement Program.

75. On information and belief, the change in M. W.'s classification was necessitated, not by a change in her handicapping condition, but by the City defendant's failure to develop a sufficient number of emotionally handicapped classes.

76. On information and belief, neither the COH nor its subcommittee reviewed or approved the change in M. W.'s classification.

77. On information and belief, the City defendants completed a psychological evaluation of M. W. in April, 1980, after Mrs. W.'s consent to M. W.'s declassification as a handicapped child had already been obtained. As a result of this evaluation, M. W. was determined not to have a handicapping condition.

78. Despite Mrs. W.'s consent to a non-handicapped placement in March, 1980, on or about April 17, 1980, defendant Salemi authored

a memorandum in which he stated that M. W. should not be accepted into the proposed placement because it was so late in the school year.

79. M. W. was not enrolled in the proposed placement during the remainder of the 1979-80 school year.

80. Prior to the beginning of the 1980-81 school year, Mrs. W. received no written notice of M. W.'s placement for that year.

81. On or about September 12, 1980, Mrs. W. informed defendant Lays that her daughter needed placement in a special class.

82. Defendant Lays failed to inform Mrs. W. of her daughter's procedural rights under federal and state law or to initiate a hearing on her behalf.

83. On or about September 24, 1980, Mrs. W. signed a parental approval slip authorizing her daugher's placement in the Achievement Program, a nonhandicapped placement.

84. Mrs. W. was not notified in writing of the available procedural rights prior to signing the parental approval slip. The parental approval slip did not contain a statement that the approval was revocable.

85. In October, 1980 M. W. was placed in the Achievement Program at Franklin.

86. On or about October 27, 1980, M. W.'s doctor, James D. Lee, requested that M. W. be evaluated for possible handicapping conditions. A copy of this request is attached hereto and incorporated herein as plaintiffs' Exhibit C.

87. On or about November 3, 1980, defendant Greenberger wrote to Dr. Lee stating that M. W. had been evaluated in April, 1980 and

that she was found not to have a handicapping condition. A copy of this letter is attached hereto and incorporated herein by reference as plaintiffs' Exhibit D.

88. On information and belief, neither defendant Greenberger nor any other employee of the CSD informed Mrs. W. of her procedural rights, including a right to obtain an independent evaluation, or initiated a hearing.

89. M. W. has been attending a slow learners class at Benjamin Franklin High School since October, 1980. She is failing most of her courses and is receiving no special education or related services designed to meet her specific needs.

90. Mrs. W. has never been invited to attend a planning conference to develop an IEP for M. W.

91. On information and belief, no IEP has ever been developed for M. W.

PLAINTIFF A. M.

92. Plaintiff A. M. is an eighth grade student in the CSD with a specific learning disability. He has a normal IQ, achieves at close to grade level in mathematics and reads at approximately a third grade level.

93. In early 1979, when A. M. was in the sixth grade at School No. 22, his mother recommended that he be referred for evaluation as a handicapped child.

94. In response to this request, A. M.'s teacher referred him to the Student Educational Services team for testing on or about

March 20, 1979. This referral was "approved" by the School No. 22 Vice-principal on or about March 29, 1979. A copy of the referral form is attached hereto and incorporated herein as plaintiffs' Exhibit E.

95. On information and belief, the City defendants did not evaluate A. M. and he completed the sixth grade without having been identified as a handicapped student and without having been provided with an appropriate educational program.

96. In September, 1979, A. M. entered Interim Junior High School. Interim Junior High School is a special magnet school, drawing children from throughout the CSD and some suburban districts. It is an ungraded junior high school and is best described as a school without walls, in which children contract to perform certain tasks in an open school environment.

97. At the time he entered Interim, a CSD employee noticed that A. M. had not been evaluated pursuant to the March, 1979 referral and again requested an evaluation. A copy of this request is attached hereto and incorporated herein as plaintiffs' Exhibit F.

98. On or about September 28, 1979, another request for evaluation was sent to the SES team at Interim. A copy of this request is attached hereto and incorporated herein as plaintiffs' Exhibit G.

99. On or about January 16, 1980, Mrs. M. met with two members of the Interim SES team to discuss A. M.'s placement. They informed Mrs. M. that A. M. had a specific learning disability and that he needed a learning disability placement.

100. At the January 16, 1980 meeting, Mrs. M. was further informed that no learning disability program existed at Interim and that A. M would have to transfer out of the magnet school in order to be placed in a learning disability program.

101. Mrs. M., concerned that her child would not adjust to a transfer in the middle of the year, requested that A. M. be allowed to finish the year at Interim. The SES team members agreed to this.

102. At this conference, Mrs. M. further stated that she did not want A. M. to attend the learning disability program at Benjamin Franklin Junior/Senior High School, his neighborhood school, because she felt a Senior High School atmosphere would overwhelm her son, who was socially immature and very sensitive to any criticism about his inability to read. She also felt that A. M.'s placement in a school of over 2,000 students would be extremely inappropriate for her son.

103. A team member agreed with Mrs. M. that Franklin was an inappropriate placement for A. M., given his psychological make-up. He recommended that Frederick Douglass Junior High School would be more appropriate for A. M.'s eighth grade placement.

104. In reliance on the representation that A. M. could transfer to Douglass, Mrs. M. consented to her son's placement.

105. On or about January 22, 1980, Mrs. M. signed the consent form attached hereto and incorporated herein as plaintiffs' Exhibit H.

106. Prior to signing the consent to placement, Mrs. M. received no written notice of the tests and/or reports on which the

proposed classification of A. M. was based; she received no written or oral notice of her right to obtain an independent educational evaluation and a list of places where one could be obtained; she received no oral or written notice of her right to obtain a hearing or of procedural safeguards to protect her son's educational rights; she received no oral or written notice of the availability of free legal assistance; and she received no written or oral notice that the aforementioned consent was revocable.

107. On or about January 23, 1980, the SES team recommended a learning disability placement for A. M. at Douglass beginning in September, 1980. A copy of this recommendation is attached hereto and incorporated herein as plaintiffs' Exhibit I.

108. On information and belief, neither the COH nor any of its subcommittees reviewed A. M.'s evaluations or made a recommendation concerning A. M.'s placement.

109. On information and belief, A. M.'s referral form went to the CSD Central Office, where an employee assigned A. M. to Benjamin Franklin Junior/Senior High School.

110. This assignment was made pursuant to a school district policy that handicapped children must, whenever possible, be educated at their neighborhood schools. This policy was applied in abrogation of the terms of the consent form signed by Mrs. M., without oral or written notice to her and without referring the matter to the COH.

111. In August, 1980, Mrs. M. received written notification from defendants that A. M. was enrolled at Franklin for the 1980-1981 school year.

112. Mrs. M. informed employees of the CSD that a mistake had been made and that, rather than allow A. M. to enter Franklin, she would prefer that he return to Interim pending resolution of the matter.

113. At the beginning of the 1980-1981 school year, A. M. returned to Interim, where he attended school until approximately September 17, 1980.

114. On or about September 17, 1980, A. M.'s guidance counselor informed Mrs. M. that A. M. was attending Interim illegally and that he would be removed from school until the matter was resolved.

115. On or about September 18, 1980, Mrs. M. requested that the COH meet to discuss A. M.'s educational placement.

116. On or about September 29, 1980, Mrs. M. met with the COH.

117. On or about October 1, 1980, the COH issued its recommendation that A. M. be placed in a seventh grade learning disabilities program at Frederick Douglass Junior High School. A copy of this recommendation is attached hereto and incorporated herein as plaintiffs' Exhibit J.

118. On or about October 11, 1980, Mrs. M. took A. M. to Douglass to attempt to enroll him in an eighth grade learning disabilities program because he had completed seventh grade at Interim.

119. At this time Mr. Glasier, a dean at Douglass, informed Mrs. M. that there were no seventh or eighth grade learning disabilities placements at Douglass and that the COH erred when it recommended that A. M. attend Douglass.

120. Mrs. M., through her attorney, secured A. M.'s return to Interim. At the time he returned to Interim, A. M. had already missed approximately three weeks of school.

121. With the assistance of counsel, Mrs. M. appealed from the COH's recommendation that A. M. be placed in the seventh grade at Douglass.

122. After an impartial hearing, A. M. was placed in an eighth grade learning disabilities program at Douglass and began attending classes there on or about November 2, 1980.

123. On or about January 15, 1981, Mrs. M. received a letter from A. M.'s learning disabilities teacher, along with a partially completed Individualized Education Program. Copies of the letter and IEP are attached hereto and incorporated herein as plaintiffs' Exhibits K and L.

124. This was the first IEP which Mrs. M. had seen for A. M. She was never invited to attend any meetings to develop this IEP, and she did not participate in its development.

PLAINTIFF K. M.

125. K. M. is a nine-year-old who presently attends fourth grade at School No. 42. Her mother suspects she has a specific learning disability similar to that of her brother, plaintiff A. M.

126. On or about September 30, 1980, Mrs. M. requested in writing

that defendants evaluate K. M. for a suspected handicapping condition.

127. Defendants performed a psychological evaluation of K. M., and in November 1980, the Student Educational Services team determined that K. M. did not have a handicapping condition.

128. In December 1980, the SES team reconsidered K. M.'s classification, decided that she was a handicapped child and recommended that she be placed in a learning disabilities program.

129. At that time the SES team recommended that K. M. be placed in a learning disabilities program beginning in September, 1981.

130. Mrs. M. received no written notice of her daughter's rights under the EAHCA prior to evaluation of K. M.

131. On or about December 4, 1980, despite the recommendation of the SES team, a CSD employee informed Mrs. M. that K. M. had been found not to have a handicapping condition.

132. On information and belief, K. M. was never referred to the COH or any of its subcommittees for classification and placement.

133. Mrs. M. received no written notice of the tests and/or reports on which the SES team's recommendation was based; she received no written or oral notice of her right to obtain an independent educational evaluation and a list of places where one could be obtained; she received no oral or written notice of her right to obtain a hearing or of procedural safeguards to protect her daughter's educational rights; and she received no oral or written notice of the availability of free legal assistance.

FACTS PERTAINING TO THE CLASS AS A WHOLE

134. On information and belief, the CSD has elected to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, through compliance with the requirements of the EAHCA and its implementing regulations.

135. The City defendants have failed to adopt and implement policies and procedures to ensure that students thought to be handicapped and handicapped students needing modifications in their educational programs are promptly evaluated and classified.

136. Referrals and requests for evaluation are delayed, ignored or improperly routed due to the City defendants' failure to implement an effective procedure for timely action on such requests and/or referrals.

137. On information and belief over 500 students in the CSD were referred for evaluation between September 1980 and February 1981.

138. On information and belief over 500 students in the CSD who were referred for evaluation between September 1980 and February 1981 were not evaluated within 30 school days after referral.

139. The City defendants have failed to adopt and implement policies and procedures to ensure that students who have been classified as handicapped and recommended for placement in appropriate educational programs are promptly placed in such programs.

140. The City defendants have also failed to develop an adequate number of programs to provide needed services to handicapped stu-

dents and to recommend private and residential placements for handicapped students when indicated.

141. As a result of the policies and practices of the City defendants, handicapped students and students thought to be handicapped in the CSD go for months after identification as potentially handicapped without appropriate educational programs and services, and some such students go without any educational program for a month or more.

142. On information and belief, over 100 students whom the City defendants classified as handicapped between September 1980 and February 1981 were not provided with special education and related services within 30 school days after classification.

143. The City defendants remove handicapped students from their current educational programs before placement in another more appropriate program has been determined and arranged.

144. Parents are occasionally offered inappropriate alternatives for temporary placement of their handicapped children. They are not informed of their children's legal right to remain in their then-current educational programs while the COH evaluation/placement process occurs.

145. Similarly, handicapped students attempting to enroll in school are prevented from doing so. Parents are not informed that their handicapped children have a legal right to enroll in school while COH procedures are pending.

146. On information and belief, the City defendants have established a system for evaluating students which prevents most students from ever being evaluated and classified by a properly constituted COH.

147. Each CSD school has an SES team. Each SES team does not include all of the following: a parent, a special education teacher or special education administrator, and a physician.

148. On information and belief the CSD evaluation and classification policy for students thought to be handicapped operates as follows:

(a) The SES team decides what tests and other evaluations should be performed.

(b) The tests and other evaluations are performed.

(c) The SES team reviews the results of the tests and evaluations and recommends whether classification as a handicapped student is appropriate, and, if so, make a recommendation as to placement of the student.

(d) When classification and placement as a handicapped student are recommended a member or members of the SES team meet with the parent, explain the proposed classification and placement, and obtain parental consent.

(e) Where the SES team has obtained parental consent to a proposed classification and placement, neither the COH nor any subcommittee of the COH reviews the classification or placement. The proposed placement is then implemented by CSD administrators.

(f) When classification and placement as a handicapped student are not recommended by the SES team, no further action is taken. The matter is referred to neither the COH nor any of its subcommittees.

149. The City defendants do not give parents written notice of

their procedural rights prior to initiating evaluations of students thought to be handicapped or of handicapped students thought to require a change in placement or program.

150. The City defendants do not give parents written notice of their procedural rights when they propose to or refuse to initiate or change the program or placement of a handicapped student or a student thought to be handicapped.

151. Such notices must inform parents of their right to obtain an independent evaluation, possibly at public expense; their right to an impartial hearing on the SES or COH recommendation and the names of organizations which provide free representation in such matters; their child's right to remain in his/her then-current educational placement pending resolution of the matter; and numerous other procedural rights of which parents are generally unaware.

152. Instead of giving parents written notices of their rights, the City defendants routinely obtain parental signatures agreeing to a proposed placement on a "checklist" type of form.

153. This "consent" form does not fully inform parents of their rights (see, e.g., plaintiffs' Exhibit H). Sometimes parental signatures are obtained while the form is still otherwise blank. Even when the "blanks" are checked to indicate that certain information has been provided to a parent, often such information has not in fact been provided.

154. As a result of this practice, parents are given the impression that the option chosen for their child is the only option available and that they are powerless to affect the decision being made.

155. Even when a parent does protest a proposed classification or placement, CSD officials do not give written notice to the parent of his/her procedural rights, nor do CSD employees initiate a hearing on the parental complaint.

156. Only when a parent on his or her own initiative enlists the aid of an advocate or attorney do the City defendants respond to parental protests by providing written notice of procedural rights and impartial hearings. Efforts by advocates and attorneys generally result in a successful resolution of the individual student's situation, but because the City defendants refuse to alter the practices complained of herein, hundreds of unrepresented CSD students are denied appropriate educational services every school year.

157. The City defendants have failed to adopt and implement policies and procedures to obtain required parental input before students' Individualized Education Programs are developed. Specifically, they fail to hold meetings to develop IEPs within 30 calendar days after students are classified as handicapped.

158. Rather than being invited to attend IEP planning conferences, parents are often sent a completed or blank IEP for their child and instructed to sign on the dotted line (see, e.g., plaintiffs' Exhibits K and L).

159. The City defendants knew or should have known that their conduct and policies failed to comply with the requirements of federal and state law.

160. The State defendants have failed to undertake sufficient monitoring and evaluation activities and to develop adequate pro-

cedures for monitoring and evaluation to insure that handicapped students in the Rochester City School District are provided appropriate educational programs meeting the requirements of federal law and the educational standards of the State Department of Education and that the funds received by the CSD for the education of handicapped children are spent in the manner required by federal and state law.

161. The State defendants have failed to insure that all handicapped children in the CSD are identified, located and evaluated in a timely manner and that an IEP is developed and promptly implemented for each handicapped child.

162. The State defendants have failed to insure that the City defendants are able to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped students.

163. The State defendants have failed to insure that the City defendants have established and implemented all the procedural safeguards guaranteed to handicapped students by federal and state law. They have also failed to insure the implementation of evaluation procedures, the development of a continuum of alternative placements based on properly developed IEPs, and the provision of academic, nonacademic and extracurricular services which meet the requirements of federal and state law.

164. Exhaustion of any administrative remedies would be futile in this matter.

165. This action challenges as inadequate the very procedures by which administrative review takes place at the local level. Plaintiffs allege herein that the administrative review rights accorded to handicapped students and those students thought to be handicapped are both inadequate as designed and administered by the City defendants. Particularly, the plaintiffs allege that the inadequate notice of procedural rights given to parents precludes them from ever invoking these rights. The administrative remedies which do exist are also inadequate in that theydo not accord the full scope of relief sought by plaintiffs. Those plaintiffs who have participated in the administrative process have achieved some limited individual relief but have been unable to achieve any meaningful changes in the system. The administrative process also cannot offer the injunctive and compensatory relief sought herein. Finally the administrative process is excessively time consuming for students who have only a limited time during which they are entitled to a free, appropriate public education.

166. All named plaintiffs and all members of the plaintiff class and subclass remain subject to the operation of the policies and practices complained of herein. Handicapped students must have their IEPs reviewed annually and must be fully re-evaluated every three years. Their placement and program must be reviewed whenever a parent or school employee has reason to believe review and revision may be necessary. The procedures and practices complained of herein are implicated in every such review or re-evaluation.

FIRST CLAIM FOR RELIEF

167. By failing to develop and implement polcies and procedures which insure that plaintiffs and the class are referred to the COH, and evaluated and classified by the COH within thirty days after request for referral, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1412, and implementing regulations at 34 C.F.R. §§300.220, 300.300; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.32, 104.33 and 104.35; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §200.5.

SECOND CLAIM FOR RELIEF

168. By placing plaintiffs and the subclass in special education programs without performing appropriate evaluations and without developing IEPs with required parental participation, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1414, and implementing regulations at 34 C.F.R. §§300.300, 300.4, 300.340-300.346, 300.503, 300.531-300.534, 300.550-300.554; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.33, 104.34, 104.35, 104.37; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §§200.3, 200.4 and 200.5.

THIRD CLAIM FOR RELIEF

169. By failing to give plaintiffs and the class and their parents written notice containing: a full explanation of all of the procedural safeguards available to them by law; a description of the action proposed or refused by the COH and the reasons for such action including alternatives considered; a description of each evaluation procedure, test, record or report used as a basis for the proposal or refusal; and a description of any other relevant factors, prior to initiating an evaluation or changing or refusing to change a child's educational placement the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1415, and implementing regulations at 34 C.F.R. §§300.504, 300.505; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §104.36; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §200.5.

FOURTH CLAIM FOR RELIEF

170. By obtaining consent from the parents of plaintiffs and the class prior to initial evaluation and/or initial placement without fully informing parents of their procedural rights and without informing parents that their consent is revocable, the City

defendants have violated and continue to violate the EAHCA, 20 U.S.C. §§1401, et seq., and implementing regulations at 34 C.F.R. §§300.-500, 300.504; §504 of the Rehabilitation Act of 1973; 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.35, 104.36; 42 U.S.C. §1983; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §200.5.

FIFTH CLAIM FOR RELIEF

171. By removing plaintiffs and the class from their then-current educational placements or refusing to place them in school upon application for admission while the COH evaluation, classification and placement process occurs, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1415, and implementing regulations at 34 C.F.R. §300.513; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.33, 104.36; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4404 of the New York Education Law and implementing regulations at 8 NYCRR §200.5.

SIXTH CLAIM FOR RELIEF

172. By failing to act upon recommendations for placement, by failing to provide plaintiffs and the subclass with special education and related services without undue delay, and by failing to develop a sufficient number of alternative placements to meet the educational needs of plaintiffs and the subclass, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §§1412-1415, and implementing regulations at 34 C.F.R. §§300.220, 300.300, 300.551; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.33, 104.34, 104.35, 104.37; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §§200.4 and 200.5.

SEVENTH CLAIM FOR RELIEF

173. By failing to provide plaintiffs and the subclass with academic, nonacademic and extracurricular services and activities in a manner which affords them an equal opportunity for participation in such services and activities, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1412, and implementing regulations at 34 C.F.R. §§300.305, 300.306, 300.307, 300.553; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.34, 104.37; 42 U.S.C. §1983; and the Fourteenth Amendment to the United States Constitution.

EIGHTH CLAIM FOR RELIEF

174. By failing to develop Individualized Education Programs for plaintiffs and the subclass before special education and related services are provided to them and by failing to include their parents in meetings at which their IEPs are developed, reviewed or revised, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1414, and implementing regulations at 34 C.F.R. §§300.-340-300.349, 300.533, 300.534, 300.552, 300.4; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §104.33; 42 U.S.C. §1983; §4402 of the New York Education Law and implementing regulations at 8 NYCRR §200.4.

NINTH CLAIM FOR RELIEF

175. By failing to inform plaintiffs and the class and their parents of their right to present complaints, to have an impartial due process hearing and of other procedural rights when the parents disagree with a proposed classification or placement, and by failing to initiate a hearing themselves when they become aware that parents disagree with a proposed placement, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §1415, and implementing regulations at 34 C.F.R. §§300.504-300.513; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §104.36; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §4404 of the New York Education Law and implementing regulations at 8 NYCRR §200.5.

TENTH CLAIM FOR RELIEF

176. By failing to make placements available to plaintiff J. G. and other members of the plaintiff subclass who may require placement in private schools or in public or private residential schools, and by misinforming parents of the availability of such placements, the City defendants have violated and continue to violate the EAHCA, 20 U.S.C. §§1412, 1413, and implementing regulations at 34 C.F.R. §§300.300, 300.302, 300.400-300.402, 300.550-300.556; §504 of the Rehabilitation Act of 1973; 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §104.33; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; §§4401, 4402, 4405, 4407 of the New York Education Law and implementing regulations at 8 NYCRR §§200.8, 200.9 and 200.10.

ELEVENTH CLAIM FOR RELIEF

177. As a result of the above-described deprivations of their federal constitutional and statutory rights by the City defendants, the named plaintiffs have been damaged as follows:

(a) J. G. in the amount of $75,000;

(b) M. W. in the amount of $50,000;

(c) A. M. in the amount of $35,000; and

(d) K. M. in the amount of $2,000.

TWELFTH CLAIM FOR RELIEF

178. By failing to undertake and implement adequate monitoring and enforcement activities to correct and/or prevent the violations enumerated in the first ten causes of action above, the State defendants have violated and continue to violate the EAHCA, 20 U.S.C. §§1412-1415, and implementing regulations at 34 C.F.R. §§300.2, 300.128, 300.130, 200.138, 300.146, 300.190(b)(2), 300.300, 300.-305, 300.306, 300.307, 300.341-300.346, 300.501, 300.530(a), 300.-534(a), 300.555, 300.556, 300.600, 76.101, 76.104, 76.770-76.772, 76.780; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 34 C.F.R. §§104.32-104.36; 42 U.S.C. §1983; the Fourteenth Amendment to the United States Constitution; and §4403 of the New York Education Law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;

2. Certify this action as a class action pursuant to Rules 23(a) and (b)(2) on behalf of the class and subclass described in ¶¶4 and 5 herein;

3. Declare that the defendants' actions and failures or refusals to act have violated and continue to violate plaintiffs' constitutional and statutory rights as alleged herein;

4. Enjoin the defendants from continuing to engage in the practices complained of herein;

5. Order the City defendants to develop and present to the Court within 90 days a detailed plan, suitable for immediate implementation upon approval, to correct the improper practices addressed herein. The plan should include at least the following elements:

(a) a method of insuring that a request for evaluation of a student believed to be handicapped which is received at any level and in any form is immediately communicated to the building administrator, SES team and COH;

(b) proposed guidelines to be distributed to all District staff delineating staff responsibilities for implementation of the methods set forth in subsection (a);

(c) a method of insuring that evaluations and classifications are completed by the COH within 30 days of receipt of request;

(d) a specific delineation of the duties of the SES team and the COH and a method of ensuring that each entity performs those functions which are assigned to it;

(e) a method of insuring that when a recommendation for placement is made, placement in the recommended program is accomplished within 30 days;

(f) a method for ensuring that students being evaluated for placement or change in placement will be maintained in their current educational program or enrolled in an appropriate C.S.D. school pending conclusion of the COH process;

(g) a method for insuring development of IEPs, both prior to initial placement and at regular intervals thereafter, which includes parental participation to the fullest extent required by law;

(h) a set of forms to be used to give parents notice prior to collecting evaluative information, prior to a proposal or refusal to initiate or change a child's educational placement, prior to an impartial hearing and prior to development or revision of an IEP;

(i) a method for insuring that all notices to parents will be sent as required by law;

(j) a method of insuring that a parent who complainswith respect to any matter relating to the identification, evaluation or educational placement of his/-her child or the provision of a free, appropriate public education to such child shall be notified in writing of all available procedural rights;

(k) a method of insuring that students are placed in private schools or public or private residential schools when necessary;

(l) a training schedule which will insure that District personnel, including classroom teachers, special education teachers, counselors, school psychologists, administrators, SES team members, COH members, are fully informed of their duties and responsibilities with respect to class members;

(m) a procedure for receiving, processing and acting upon complaints concerning failure of District staff to follow proposed guidelines and procedures, including identification of staff members responsible for monitoring compliance;

(n) an assessment of the nonacademic, extracurricular and physical education opportunities which are currently made available to handicapped students in each special education setting in the District, including students attending school part-time and those receiving home or hospital instruction, and a method of making such opportunities available to handicapped students as fully as they are available to nonhandicapped students;

(o) an assessment of the projected special education placement needs of class members for the next two school years and an estimate of the number and types of special classes, placements and additional staff necessary to effectuate placements within legal time limits;

(p) an estimate of the cost of each element of the plan;

(q) proposed methods of financing the plan from local, state and/or federal funding sources.

6. Order the State defendants to assist the City defendants in the development of the plan described above and to develop and present to the Court, within 90 days, a detailed plan, suitable for immediate implementation upon approval, for correcting the monitoring, evaluation and enforcement deficiencies complained of herein. Such plan should include at least the following elements:

(a) a thorough evaluation of the City defendants' record-keeping and information-transmitting systems to determine where changes must be made in order to insure complete and accurate reporting of information;

(b) a complete audit of the City defendants' expenditures of state and federal funds for the education

of handicapped children for the past two years with recommendations for reallocation of funds where necessary;

(c) a detailed schedule for transmission of data by the City defendants, including specification of State Education Department employees who will be responsible for evaluating such data;

(d) a detailed procedure for determining when violations of legal requirements have occurred, for requiring immediate compliance, and for imposing sanctions in the event of continuing noncompliance;

(e) a method for disseminating copies of "Your Child's Right to an Education: A Guide for Parents of Handicapped Children in New York State" to the parents of all class members.

7. Allow plaintiffs to submit to the Court and to the defendants in writing any objections to the plans required by subparagraphs 5 and 6 within 60 days of plaintiffs' receipt of said plan;

8. Convene a hearing, if necessary, on any objections to the plan that plaintiffs may raise;

9. After such hearing, order immediate implementation of such plan as amended and approved by the Court;

10. Require the defendants to submit to the plaintiffs every six months a report on the implementation of the above-described plans and allow the plaintiffs to petition the Court for any relief which may be appropriate and necessary;

11. Retain jurisdction over this matter pending full implementation of all orders issued and plans approved by the Court;

12. Grant the named plaintiffs damages in the following amounts:

a. J. G. in the amount of $75,000;

b. M. W. in the amount of $50,000;

c. A. M. in the amount of $35,000; and

d. K. M. in the amount of $2,000;

13. Award the plaintiffs their costs and disbursements herein and reasonable attorneys' fees, pursuant to 42 U.S.C. §1988 and 29 U.S.C. §794a; and

14. Grant such other, further and different relief as the Court deems just and proper.

Dated: March 6, 1981

MONROE COUNTY LEGAL ASSISTANCE CORPORATION
BETSEY B. SWAN
80 West Main Street
Rochester, New York 14614
Tel: 716-325-2520

GREATER UPSTATE LAW PROJECT
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80 West Main Street
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Attorneys for Plaintiffs

CITY SCHOOL DISTRICT
13 SOUTH FITZHUGH STREET
ROCHESTER, NEW YORK 14614
461-1050

Home Instruction
Division of Instruction
Student Educational Services
Department of Special Education

October 24, 1978

Mrs. G
224 Morton Street
Rochester, NY 14609

Dear Parent(s):

Your child, who is unable to attend school, has been recommended for Home Instruction. Our teacher(s) assigned by the Department of Special Education, will be calling on you to arrange a tutoring schedule.

The Board of Education requires that an adult be in the home during the teaching period. It is also necessary that a pleasant, quiet, and well lighted place be provided for instruction.

Your cooperation will be appreciated so your child may best gain from this service.

Sincerely,

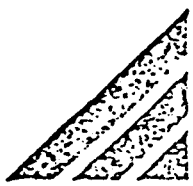
Robert F. Lays

Robert F. Lays,
Project Supervisor
Department of Special Education
410 Alexander Street
Rochester, NY 14607

RFL/yj

cc: M. Maxey

EXHIBIT A



Rochester
General
Hospital

October 27, 1980

Bernard Greenberg
Chairman of the Committee for the Handicapped
Rochester City School District
131 West Broad Street
Rochester, NY 14608

RE: W , M

Dear Mr. Greenberg:

I am writing in regard to M W , a 15 year old ninth grader at Franklin High School who is under my care at the Rochester General Hospital Pediatric Clinic. M is known to have a number of handicapping conditions which were acquired congenitally. This includes congenital cataracts from which she is blind in her left eye and has limited vision in her right and non-progressive hydrocephalus, for which she required a ventricular shunt as an infant.

As a consequence, M has had a long term learning impairment. She had been in special sight-saving classes as an elementary school student here in Rochester but apparently moved from the area for a period of 4-5 years and was placed in a special education class upon her return two years ago. That class proved totally unsatisfactory and when I first became involved in her care this past July, she had been out of school for over a year.

M has been back to Franklin since the beginning of the school year. She is not involved in any specialized teaching at this time. From reviewing her medical record and in discussion with M , I feel that M would benefit from a more specialized, individualized teaching program.

Under PL. 94-142, I request that M W be evaluated for her handicapping condition and appropriate placement be made. Your prompt attention to this matter would be appreciated.

Respectfully,

James D. Lee, M.D.
Pediatric Ambulatory Care Center

CC: Mrs. Josephine Genovese
Mr. Kenneth Kelbaugh

EXHIBIT C

CITY SCHOOL DISTRICT
131 WEST BROAD STREET
ROCHESTER, NEW YORK 14608
716-325-4560

April 16, 1980

Mrs. C.
224 Morton St.
Rochester, NY 14609

RE: J C. DOB: 11/5/62

Dear Mrs. G ,

This letter is in regard to your son J G. and his home instruction program.

We have been informed by Mr. Albanese, J 's tutor, that your son now resides at the Rochester Psychiatric Center. Since the Rochester Psychiatric Center provides an educational program we will terminate his home instruction program as of April 15, 1980.

Should J be returned to home and the tutoring program to be continued, please call me at 325-4560, extension 2477.

Sincerely,

Joseph F. Salemi
Assistant Director
Special Education Department

JFS:kmm

CC: Mrs.Kehoe

EXHIBIT B

CITY SCHOOL DISTRICT
131 WEST BROAD STREET
ROCHESTER, NEW YORK 14608
716-325-4560

November 3, 1980

James D. Lee, M.D.
Pediatric Ambulatory Care Center
Rochester General Hospital
1425 Portland Avenue
Rochester, New York 14621

Dear Dr. Lee,

This letter is in response to your request for evaluation of M W , 15 year old student presently assigned to the program for slow learners at Ben Franklin Jr.-Sr. High School.

M W was reviewed and evaluated by Dr. Harold Schwartz, school psychologist, on April 3, 1980. Included with his evaluation is the medical, social and educational report. The final recommendation by the Student Educational Services Team indicated that M W does not possess a handicapping condition which would qualify her for special education placement under the present Commissioner's Regulations.

However, she does qualify as a slow learner and was so placed in a class for students who are non-handicapped but slow learners at Ben Franklin, September 1980.

Since M W has had a complete recent evaluation (4/80) it is the district's belief that we have complied fully with P.L. 94-142. However, as a concerned person, you may inform parents of their rights to an outside (non City School District) evaluation and subsequently request a review by the Committee on the Handicapped.

Sincerely,

Bernard Greenberger
Director, Special Education Department
Chairperson, Committee on the Handicapped

BG:kmm

CC: Mr. Salemi
Dr. Schwartz

EXHIBIT D

...tment of School Psychological ...and Social Work Services

Rochester, New York

STUDENT REFERRAL FORM

Student I. No. 3153657

M A

Date of Birth 9-12-66 R ___ I ___

...ress 521 Ave D

School #22

Grade-Cluster 1-2 H.R. 216

...nts Mrs. M

Phone 544-2913

...nt Substitute

Phone

...erred by Miss G. Richmond

Date of Referral 3-29-79

...ent or Parent Substitute has been notified by the referring person of this referral Yes

In Person ✓ By Phone ___ By Letter ___ Date of Notification 1-31-79

...cher Estimate of Grade level functioning: Reading 3.9 Arithmetic 5.0

...SON FOR REFERRAL: Examples of behavior include attitude toward learning, relationships with peers and adults.

Test scores are very low and because of ...ed placement may be needed for next year.

...DIATION: What steps have been taken to meet child's needs?

Some test have been given by the D... Psych. Any Recommendations will ... follow up-

...MUNITY HEALTH NURSE: Visual Exam: Date 1/79 Results 30/30

Other health factors, comments: No significant health problems noted

...NGUAGE, SPEECH & HEARING TEACHER: Hearing Test: Date Passed 3/79 Results Normal limits

Articulation, Language:

scored 9.11 language age on Utah. Articulation is within normal limits

M. Scott

...ER ACTIVE SCHOOL PERSONNEL: Comments:

___ Attendance Teacher

___ Counselor

___ Reading Teacher

___ Other Staff

EXHIBIT E

Approved 3/29/79 (Date) by Gil W. Hallman D.Ed. (Principal - School Administrator)

DIVISION OF INSTRUCTION
STUDENT EDUCATIONAL SERVICES

CITY SCHOOL DISTRICT
ROCHESTER, NEW YORK

REQUEST FOR S.E.S. REVIEW

02034

1-79

LAST	FIRST	MIDDLE	SEX	BIRTHDATE	GRADE / CLUSTER	SCHOOL	I.D. NO.
, A			[X] M. [ ] F.	9-12-66	7	Interim	3153657

	ZIP CODE	PARENT OR SUBSTITUTE	PHONE
Avenue D.	14621	M	544-2717

ED BY Pl. Tea. - Nichols	PARENT WAS NOTIFIED OF THIS REQUEST VIA:	DATE OF NOTIFICATION	TEACHER ESTIMATE OF GRADE LEVEL →	READING	ARITHMETIC
. - Mr. Montanarello	[X] PHONE [ ] LETTER [ ] IN PERSON	9-28-79		2.1	6.0

ONE: THIS REQUEST IS TO BE USED TO REVIEW NEED FOR SERVICES IN THE FOLLOWING AREAS. PLEASE CHECK APPROPRIATE BOX(ES):

[ ] PSYCHOLOGICAL / SOCIAL WORK [ ] SPEECH / LANGUAGE [ ] HEARING [ ] HEALTH [ ] OTHER

REASON FOR REQUEST

PSYCH / SOCIAL WORK:
Extremely low Reading Level
Appears to become emotionally upset if other
mates mention or become aware of this.
Academic performance in some classes is poor.

SPEECH / LANGUAGE / HEARING / HEALTH:

N TO MEET STUDENT'S NEEDS:
Teachers have been notified of Reading difficulties.
Learning teacher receiving weekly progress reports.
If gym periods being used for remedial Reading instruction.

OTHER ACTIVE PERSONNEL:
[X] COUNSELOR [ ] ATTENDANCE TEACHER
[X] READING TEACHER [X] OTHER Planning Teacher

SPEECH / HEARING TEACHER	HEARING TEST RESULTS	DATE	LEFT	RIGHT
Dickinson		11/23/79		
be evaluated	→		15	15
guage age significantly				
s due appropriate levels				

COMMUNITY HEALTH NURSE	VISION TEST RESULTS	DATE	LEFT	RIGHT
M. Flanagan		1/79		
COMMENTS: 10/4 To gen. health aft. Ad.	→		30	30

TED AT S.E.S. TEAM MEETING: THE ABOVE STUDENT MAY HAVE A HANDICAPPING CONDITION AND REQUIRES EVALUATION AND DIAGNOSIS [X] YES [ ] NO

TS:

IS RECOMMENDED FOR S.L.D. PLACEMENT

PRINCIPAL / SCHOOL ADMINISTRATOR

COPIES TO - WHITE: CUMULATIVE RECORD
YELLOW: APPROPRIATE S.E.S. PERSON PINK: S.E.S. AT C.O.

DATE	AT	NAME OF STUDENT

S. TEAM REVIEWED THE ABOVE STUDENT AS REQUESTED. RESULTS AND PROPOSED ACTIONS WILL
USSED WITH YOU BY:

TITLE

EXHIBIT F

Mike -

Re: A... M...

"Individual Student Plan" is one in-house recording the results of testing done by the Diagnostic Service Team (D.S.T.). This team consists of the Rdg. teacher, Rdg. teacher aide and/or Rdg diagnostician.

"Student Referral Form" - no follow up is apparent. They "think" appropriate use of this form reached all concerned persons, however, they have no record of any recommendations, options or teaching strategies related to this referral. Since we can find nothing of help in the folder I guess we must assume none of the follow-up provisions were carried out.

Grace Norris from School # 22 is supposed to contact us if further info is forthcoming...

Regina

Interim Supt 28, 1979

EXHIBIT G

6.

City School District
13 South Fitzhugh Street
Rochester, New York 14614

ision of Instruction
dent Educational Services
artment of Special Education

C. H. School: Jefferson Jr. High
(Name of student)

I met with my child's school staff on June 16, 1980
(Date (s))

the following was discussed. Please check:

— My child's educational needs and the need for Special Education placement and services.

SED

— My child's classification and the reason why this is needed.

— The tests and/or reports upon which this was based.

— The availability of my child's school files, records and reports.

— The right to obtain an independent educational evaluation and a list where this may be obtained.

— The right to obtain a hearing.

— Procedures for appeal, if desired.

✓ I accept the schools recommendation for Special Education placement of my child in Frank Lawrence Resource Room - Elementary.

— I do/do not wish an informal hearing to consider this recommendation.

EXHIBIT H

[signature]
(Parent's signature)

1-22-80
(Date)

cc: Parent
Cumulative Record

I ACCEPT ONLY IF A[illegible] IS ALLOWED TO ATTEND FREDERICK DOUGLAS JR. H.GH AND THAT HE IS TO FINISH THIS YEAR OUT AT

City School District
13 South Fitzhugh Street
Rochester, New York 14614

ivision of Instruction
udent Educational Services
partment of Special Education

BUILDING SIGN-OFF SHEET

tudent's Name [illegible] School [illegible]

Following careful review, conferencing, and discussion with parents, our recommendation for the above named student is placement in: (check)

EMR	___	Orthopedic	___
TMR	___	Visually Handicapped	___
EH	___	Hearing Handicapped	___
PE	___	Other SID in reading	✓

[illegible] for 6/80

his recommendation is based on: (check)

Psychological Testing	✓
Classroom Achievement	✓
Classroom Behavior	___
Physically Handicapping Condition	___
Other	___

arents were informed of the above on 1-16-80
Date of Conference (s)

y [illegible]
Staff Member (s)

omments of SDS Team members: (check)	Agree	Disagree	Signature
School Psychologist:	✓	___	[illegible]
School Social Worker:	✓	___	[illegible]
Community Health Nurse:	✓	___	[illegible]
Language, Speech, Hearing Teacher:	✓	___	[illegible]
Principal:	✓	___	[illegible]

1-23-80
(Date)

EXHIBIT I

CITY SCHOOL DISTRICT
131 WEST BROAD STREET
ROCHESTER, NEW YORK 14608
716-325-4560

October 1, 1980

Mrs. M
1552 St. Paul Street
Rochester, New York 14621

Dear Mrs. M :

Re: A M
D/B: 9/12/66

It was the recommendation of the Committee on the Handicapped which met on September 29, 1980, and which meeting you attended, that A be placed at Douglass Jr. High School in the Learning Disabilities Program along with 7th Grade placement. This arrangement you approved.

This arrangement was made since your address is within the Douglass Jr. High optional district.

Very truly yours

BERNARD GREENBERGER
Director, Special Education Department
-and-
Chairman, Committee on the Handicapped

BG/mc
cc: Mr. Tkach, Principal, Douglass Jr. High School
Mr. Raul Fernandez, Program Administrator, Interim Jr. High School
Mr. Joseph Salemi, Asst. Director, Special Education Dept.
Ms. Betsy Swan, Monroe County Legal Assistance Office

EXHIBIT J

11 5 '81

Dear Parents:

Enclosed is an Individual Program for your child. As a resource room teacher I am required by law to develop a yearly program for your child in the area of Language Arts/Math (This depends on the child) Please read over the program and sign your name where the X is. This must be signed and immediately sent back to school. If you have any questions please feel free to call me. Thank you.

Ms. Lilly
Resource Room teacher

492-2000

EXHIBIT K

INDIVIDUAL EDUCATION PROGRAM

Student's Name A. M. School #7 Teacher(s) Conducting Conference D. Lily

Subject/ Skill/ Supportive Service	Current Instructional Skill Level	Short Term Goals: Instructional/Specific Skills	Person Writing Goals	Materials and/or Strategies	When Initiated	Estimated Duration	Evaluative Method or Device	Goal Achievment (yes-no) Comment
Language Arts		① Will increase ability to use word attack skills	D. Lily	Open Court Teacher made SRA DLM	12/80	6/81	Teacher assignments Spelling tests Workbooks	
		② Continue to develop independent reading skills	D. Lily	Spelling Workbook	12/80	6/81	comprehension work assignments	
		③ Knows how to locate information to solve problems	D. Lily	Library Survival Skills series	12/80	6/81	Library work assignments	
		④ Reads a variety of materials	D. Lily	Life Line series Tom Hunter series	12/80	6/81	ditos Observation	
		⑤ Uses both cursive & manuscript legibly	D. Lily	cursive workbook Teacher made ditos	12/80	6/81	cursive Workbook ditos Examples	

EXHIBIT L, p. 1

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