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U.S. DISTRICT COURT
EASTERN DISTRICT-WI
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

'01 SEP 13 P3:31

GERON B. NEDILSKY
CLERK

LAMONT A., AARON V., JIM M., TYLER C.,
DAVID P., JAMIE S., and MAIYSHA Y., by their parents
and next friends, MAURICE A., KIMBERLY V.,
WILLIAM M., VICKIE S., DORIS T., KENA K. and FLORA Y., on their
own behalf and on behalf of a class of similarly
situated persons.

Plaintiffs,

v.

Case No.

01-C-0928

MILWAUKEE BOARD OF SCHOOL DIRECTORS,
MILWAUKEE PUBLIC SCHOOLS, and SPENCE KORTE,
Superintendent Milwaukee Public Schools
in his official capacity, and the STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION and ELIZABETH
BURMASTER, State Superintendent of Public Instruction,
in her official capacity.

Defendants.

COMPLAINT

Plaintiffs allege as follows:

INTRODUCTION

1. This is a civil rights action brought on behalf of a class of school-aged children

with disabilities who are or may be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §§ 1400et seq., and supporting state law § 115.758 et seq. Wis. Stats. The purpose of this action is to compel the defendants Milwaukee Board of School Directors, Milwaukee Public Schools, Milwaukee Public Schools Superintendent Spence Korte, the State of Wisconsin Department of Public Instruction and the State Superintendent of Public Instruction Elizabeth Burmaster to ensure the provision of a free appropriate public education to these children by complying with and enforcing the federal and state laws designed to protect children with disabilities.

2. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools, and Superintendent Spence Korte have failed to provide free appropriate public education as required by law to students with disabilities in the Milwaukee Public School System.
3. Defendants State of Wisconsin Department of Public Instruction and Superintendent of Public Instruction Elizabeth Burmaster have failed to ensure that children with disabilities who attend schools in the Milwaukee Public Schools receive a free and appropriate public education by failing to adequately monitor Milwaukee Public School's compliance with federal and state laws related to the education of children with disabilities. Contrary to applicable law, complaints filed with the Department of Public Instruction on behalf of children with disabilities in Milwaukee Public Schools have failed to be timely

investigated, have been inadequately investigated, and the corrective action plans have not been enforced. . By failing to adequately investigate complaints regarding Milwaukee Public Schools' noncompliance with these laws and by failing to enforce these laws and the corrective action plans designed to remedy complaints the Defendants have violated the special education rights of plaintiffs.

4. The named Plaintiffs bring this action on behalf of themselves and all others similarly situated to assure that they, as well as other children who are or may be eligible for special education and related services, receive the free appropriate public education to which they are entitled.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 20 U.S.C. sec. 1415 (i)(3), 28 U.S.C. sec. 1331, 28 U.S.C. 1343(a)(3) and (4), and 42 U.S.C. sec. 12188.

PARTIES

6. The individual plaintiffs who bring this action on their own behalf and as class representatives are as follows:
 - a.. Plaintiff Lamont A. is seventeen-year-old student with cognitive disabilities. He is a resident of the Milwaukee Public School District and is eligible for special education and related services. He is a Milwaukee Public School student and attends the Milwaukee School of the Languages. His father Maurice A. is acting on behalf of Lamont and as his

next friend and represents him in this action pursuant to the provisions of Rule 17(c) of the Federal Rules of Civil Procedure.

- b. Plaintiff Aaron V. is a sixteen-year-old student with several disabilities including Asperger's syndrome, oppositional defiant disorder and attention deficit disorder. He is a resident of the Milwaukee Public School District and is eligible for special education and related services. He is a Milwaukee Public School student and most recently attended Hamilton High School. His mother Kimberly V. is acting on behalf of Aaron and as his next friend and represents him in this action pursuant to the provisions of Rule 17(c) of the Federal Rules of Civil Procedure.
- c. Plaintiff Jim M. is a seventeen year old with Asperger's syndrome. He is a resident of the Milwaukee Public School District and is eligible for special education and related services. He is a Milwaukee Public School student and attends the Milwaukee School for the Arts. His father William M. is acting on behalf of Jim as his next friend and represents him in this action pursuant to the provisions of Rule 17(c) Federal Rules of Civil Procedure.
- d. Plaintiff Tyler C. is ten year old with learning disabilities and emotional disturbances. He is a resident of the Milwaukee Public School District and is eligible for special education and related services. He is a Milwaukee Public School student and his last placement was at Greenfield Montessori School. His mother Vickie S. is acting on behalf of Tyler as his next friend and represents him in this action pursuant to the provisions of Rule

17(c) Federal Rules of Civil Procedure.

- e. Plaintiff David P. is a sixteen year old who is deaf and has bipolar and attention deficit disorders. He is a resident of the Milwaukee Public Schools district and is eligible for special education and related services. He is a Milwaukee Public School Student. His mother Doris T. is acting on behalf of David as his next friend and represents him in this action pursuant to the provisions of Rule 17(c) Federal Rules of Civil Procedure.
- f. Plaintiff Jamie S., is eight years old and had a cognitive disability. She is a resident of the Milwaukee Public Schools district and is eligible for special education and related services. In the school years 1998-2001 she attended Emerson Elementary. Her mother Kena K. is acting on behalf of Jamie as her next friend and represents her in this action pursuant to the provisions of Rule 17(c) Federal Rules of Civil Procedure.
- g. Plaintiff Maiysha Y. is thirteen years old and has a learning disability. She is a resident of the Milwaukee Public School District and is eligible for special education and related services. She is a Milwaukee Public School student and her most recent placement was at Wisconsin Conservatory of Life Long Learning. Her mother Flora Y. is acting on Maiysha's behalf as her next friend and represents her in this action pursuant to the provisions of Rule 17(c) Federal Rules of Civil Procedure.

- 7. Defendant MILWAUKEE BOARD OF SCHOOL DIRECTORS
(MBSD)oversees Defendant MILWAUKEE PUBLIC SCHOOLS (MPS)

including the provision of special education and related services. The MBS and MPS receive federal funds under IDEA and must therefore comply with the requirements of IDEA and Section 504 of the Rehabilitation Act of 1973 (Section 504). The Milwaukee Board of School Directors and Milwaukee Public Schools are a local education agency (LEA) within the meaning of IDEA.

8. Defendant SPENCE KORTE is the Superintendent of Milwaukee Public Schools and is a school district administrator within the meaning of section 118.24 Wis. Stats. As school district administrator he is responsible for the general supervision and management of professional work of the schools and the promotion of students.
9. Defendant STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION (DPI) supervises the provision of public education including special education and related services to students in Wisconsin. Both federal and state laws (IDEA and section 115.762 Wis. Stats. respectively) require that DPI ensure that students with disabilities in Wisconsin have available a free appropriate public education, including those who are suspended or expelled from school. DPI is the State Educational Agency (SEA) within the meaning of IDEA. As a recipient of federal funds under IDEA, the DPI must also comply with Section 504 of the Rehabilitation Act.
10. Defendant ELIZABETH BURMASTER is the State Superintendent of Public Instruction, whose duties include the supervision of public schools in Wisconsin and assuring compliance with IDEA and Section 504 of the Rehabilitation Act.

CLASS ALLEGATIONS

11. - Named Plaintiffs Lamont A., Aaron V., Jim M., Tyler C., David P., Jamie S., and Maiysha Y. bring this action for declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiff class consists of all school age children with disabilities who reside in the Milwaukee Public School District boundaries and who are or may be eligible for special education and related services under IDEA and Wisconsin law.
12. The plaintiff class is so numerous that joinder of all plaintiffs is impractical. In this case it is unknown who and how many children fall within the class. However, on information and belief, Plaintiffs allege that the December 2000 count reported by Milwaukee Public Schools to the Department of Public Instruction was 16,113 children with disabilities in the Milwaukee Public School District. Additionally, the class includes children who will be enrolled in Milwaukee Public Schools who are or who will be eligible for special education and related services in the future.
13. There are questions of law and fact common to the class.
14. The claims of the Plaintiffs are typical of the claims of the class. The named plaintiffs' claims of failure to provide a free appropriate public education arise from the same course of conduct that gives rise to the absentee members' claims.
15. The named plaintiffs will fairly and adequately represent the interests of the class. They have no interests that are antagonistic to the class and seek relief which will

benefit all members of the class.

16. The Defendants have acted on grounds generally applicable to the entire class, and therefore declaratory and injunctive relief with respect to the entire class is appropriate.

STATUTORY FRAMEWORK

17. Pursuant to IDEA and its implementing regulations, each child with a disability is entitled to receive a free appropriate public education consisting of special education and related services provided in the least restrictive environment appropriate to meet the child's unique needs. 20 U.S.C. §§ 1400(d), 1401 (8), and 1412(a)(1) and (5).
18. Section 504 of the Rehabilitation Act of 1973 provides in relevant part that "[n]o otherwise qualified individual with a disability in the United States,... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." 29 U.S.C. § 794(a). A recipient of federal funds which operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified individual with a disability in the recipient's jurisdiction. 34 C.F.R. § 104.33(a). The provision of an appropriate education is the provision of regular or special education and related aids and services designed to meet the individual educational needs of individuals with disabilities as adequately as the need of individuals without

disabilities are met. 34 C.F.R. § 104.33(b).

19. Under IDEA and its implementing regulations both SEAs and LEAs have obligations to find and timely evaluate students who are suspected of being a child with a disability. 20 U.S.C. Sec. 1414(a)(1)(A), 34 C.F.R. 300.125, 34 C.F.R. 300.530, Sec. 115.78(3)(a) Wis. Stats.
20. Under IDEA and its implementing regulations, every child with a disability shall be individually assessed by a multi-disciplinary team responsible for developing an Individualized Education Program (IEP) that meets the specific educational needs of the child. 20 U.S.C. § 1414(d)(1)(A) and (B); 34 C.F.R. §§ 300.343(a) and 300.532(h). The IEP team is to consist at a minimum of the parents of the child, at least one regular education teacher, at least one special education teacher who has extensive and recent training and experiences related to the child's known or suspected disability, and a representative of the LEA. 20 U.S.C. § 1414(d)(1)(B). The IEP developed by the team shall include, *inter alia*, a statement of the specific educational services to be provided to the child and the extent to which the child will be able to participate in regular education programs. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.346(c).
21. The IEP team is to meet periodically but not less than annually to determine whether the annual goals of the child are being achieved, and to revise the IEP as appropriate to address any lack of expected progress. 34 C.F.R. § 300.343(c).
22. The right of children with disabilities to be educated in the least restrictive environment (LRE) is an integral and legally required component of the free

appropriate public education guaranteed by IDEA and Section 504. The LRE mandate requires that a child with a disability be educated with nondisabled peers to the maximum extent appropriate to meet the needs of that child. 20 U.S.C. § 1412(a)(5)(A); 29 U.S.C. § 794; and 34 C.F.R. §§ 104.34(a) and 300.550(b)(1).

23. The LEA or the SEA shall ensure that the parents of each child with a disability are members of any group that makes a decision on the educational placement of a child, and that the team that makes the placement decision is knowledgeable about the child, the meaning of the placement data, and the placement options 34 C.F.R. § 300.552 (a)(1).
24. The provision of special education and related services includes the requirement of planning for and providing transition services for students age 14 and older to transition from secondary school to post-school activities including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation. 20 U.S.C. §§ 1401(30) and 1414(d)(1)(A)(vii).
25. Under IDEA children with disabilities who are subjected to 10 or more days in a school year of disciplinary removal including constructive removal are considered to have experienced a change in placement. 34 C.F.R. § 300.519. If there is no behavior intervention plan in place the LEA must convene the IEP team to develop a functional behavioral assessment in order to develop a behavioral intervention plan. If the child already has a behavioral intervention plan the IEP team shall meet to review the plan and review its implementation. 34 C.F.R. §

300.520 (b) (1).

26. Under the IDEA, a state education agency (SEA) must assure (i) that all children with disabilities have the right to a free appropriate public education, (ii) that all educational programs for children with disabilities are supervised by persons in the State responsible for the educational programs for children with disabilities and meet the SEA educational standards, and (iii) that an adequate supply of qualified special education and related services personnel, and other personnel necessary to educate children with disabilities, are appropriately and adequately prepared. 20 U.S.C. §§ 1412(a)(1)(A), 1412(a)(11)(A), 1412 (a) (14) and 1412 (a) 15.
27. Under IDEA, the SEA is responsible for approving or disapproving local educational agency (LEA) applications for IDEA funds. If the SEA determines that the LEA is failing to maintain programs providing free appropriate public education to children with disabilities, the SEA may reduce or halt payments it would have made to the LEA until the SEA is satisfied that the LEA has come into compliance. 34 CFR § 300.197 (a).
28. In order to carry out its responsibilities under the IDEA, the SEA must monitor the LEA for compliance with IDEA requirements, including free and appropriate public education, least restrictive environment, transition, discipline and placement. If the SEA finds that the LEA is not following such requirements, the SEA must take steps to see that corrective action is taken. 34 C.F.R. §§ 300.556, and 300.660.

STATEMENT OF THE CASE

29. Over 16,000 students in Milwaukee Public Schools are children with disabilities as defined by IDEA or Section 504.
30. Defendants have established a system that fails to provide many of these student with the free appropriate public education to which they are entitled.
31. Defendants have adopted practices and procedures which fail to ensure timely, procedurally proper, and adequate evaluations and individualized education plans for children with disabilities.
32. Defendants have failed to ensure that children are provided with educational placements that can meet their individual needs and which have been chosen with the participation of parents and by a team that is knowledgeable about the child, the meaning of the evaluation data and the placement options.
33. Defendants have adopted practices and policies which discourage or prevent children with disabilities from receiving their education in the least restrictive environment.
34. Defendants have failed to ensure that a continuum of alternative placements, ranging from the least restrictive to the most restrictive is available for students with disabilities. Rather, students with disabilities are routinely placed in overly restrictive environments.
35. Defendants do not determine each child's individual needs and then provide a

program to meet those needs in the least restrictive environment possible along a continuum of placements. Instead, their policy and practice is to make placement decisions based on pre-existing programs, staffing arrangements, and transportation zones or to require the child's parent to find a school on his or her own that is willing to admit the child regardless of that schools ability to provide the elements of the child's IEP.

36. Defendants have failed to ensure that the limitations on suspensions and constructive suspensions are enforced resulting in many students missing school without being provided functional behavioral assessments and plans, or any alternative educational placements.
37. Defendants have failed to ensure that the full range of transition services are available and provided to transition age students.
38. Defendants have failed to ensure that IEP's , once prepared, are properly distributed and implemented and that required related services are provided.
39. Defendants have failed to ensure that an adequate supply of qualified special education and related service personnel and other personnel necessary to educate children with disabilities are appropriately and adequately prepared.

NAMED PLAINTIFFS

40. Each of the named plaintiffs has been injured by the aforesaid practices and policies of the defendants.
41. Plaintiff Lamont A. is a seventeen year old with cognitive disabilities. He attends

the Milwaukee School of Languages and is served in a segregated classroom.

During the 2000-2001 school year he received virtually no transition services. He

has not received training in activities of daily living despite a documented need.

An educational consultant observing his classroom noted his academic

programing included coloring and watching Teletubbies on TV. He was denied

participation on field trips, participation in a special Olympics program, and work

programs. He has made virtually no progress on IEP goals in the last three years

and the goals have not been significantly changed during that period. In February

2001 he missed eighteen consecutive days of school and the family received no

contact from the school regarding Lamont's absence. The IEP team was not

reconvened in response to this absence.

42. Plaintiff Aaron V. is a 16 year old with Asperger's syndrome, oppositional defiant disorder, and attention deficit disorder. He attends Hamilton High School. Proper disciplinary procedures have not been followed with Aaron. He has not had a functional behavioral assessment and he missed more than ten days of school during the 2000-2001 school year due to constructive removals. The IEP team was not reconvened in response to this suspension. His IEP does not address his transition needs including behavioral and social skills. His procedural IEP rights have been violated numerous times. His teacher reported at an IEP meeting that there is inadequate staffing to provide the services Aaron needs.
43. Plaintiff Jim M. is a 17 year old with Asperger's syndrome. He currently is placed "temporarily" in a satellite site classroom at a Milwaukee Public School

administration building. This "temporary" placement has lasted for over one year. He is completely segregated from regular education students. He has been unnecessarily segregated from his peers and been prohibited from participating in various activities because of his disability. Attempts to return him to his previous placement at Milwaukee School for the Arts have been unsuccessful despite his musical gifts. Additionally, he has been intentionally harassed and provoked by school personnel and told by an administrator that teachers do not want him at their school.

44. Plaintiff Tyler C. is a ten year old with learning disabilities and emotional disturbances. His IEP is not meeting his needs and school personnel have told his mother they are not equipped to meet his needs and they "have nowhere to put him." He has made little or no progress in his IEP goals over the last two years. During the 2000-2001 school year he was constructively suspended from school in far excess of 10 days. The IEP team was not convened to develop a functional behavioral assessment. Milwaukee Public Schools suggested an alternative placement for the 2001-2002 school year that would have required an hour and a half bus ride one way and would require Tyler to get up early which is made exceedingly difficult because of his medications. When Tyler's mother objected to this proposed placement she was given a list of twenty three schools and told to find one on her own that would take her son.
45. Plaintiff Jamie S. is an eight year old girl with cognitive disabilities. She attended Emerson Elementary for three years starting there in K5. In kindergarten she had

serious difficulties with learning and behavior. When her mother questioned school personnel she was assured Jamie would outgrow it. Jamie continued to struggle and was required to repeat first grade. It was not until the second semester of her second year in first grade that Jamie was finally evaluated for special education eligibility. She was found to have an IQ of 62 and is eligible for special education services under cognitive disabilities. Jamie's mother did not receive notice of the meeting at which Jamie's eligibility was determined, her IEP written and her placement determined.

46. Plaintiff David P. is a sixteen year old who is deaf and emotionally disturbed. In the 2000-2001 school year he was enrolled in a residential treatment program. In the 2001-2002 school year he is attending Marshall High School in Milwaukee Public Schools. He is eligible for special education services and has received them in the past from Milwaukee Public Schools. However, he does not currently have an IEP and no dates to convene an IEP meeting have been set.
47. Plaintiff Maiysha Y. is a thirteen year old with learning disabilities. In the 2000-2001 school year she attended the Wisconsin Conservatory of Life Long Learning. According to her IEP she is to be pulled out for special education services four times per week but this service has not been provided. She was removed from school for fifteen days without a functional behavioral assessment being done. When the IEP team was eventually reconvened, it was scheduled at a time that her mother had advised the school that she was not available. The IEP meeting that was conducted without the mother present was additionally missing

the regular education teacher

**SUMMARY OF DEFENDANTS' SYSTEMIC FAILURE TO
COMPLY WITH THE IDEA**

48. Pursuant to its obligation to adequately monitor the performance of LEAs in Wisconsin, DPI accepts complaints which allege IDEA violations by LEAs.
49. In 1994, a group of parents of children who were eligible to receive special education supports and services from MPS filed an IDEA complaint alleging numerous violations of the IDEA committed by MPS. DPI numbered this complaint 94-044. (Hereinafter "group IDEA complaint").
50. Under federal law, DPI is obligated to investigate and determine whether or not an IDEA complaint is substantiated within 60 days. If it is substantiated, DPI must order the LEA to correct the substantiated violations of the IDEA.
51. DPI substantiated the group IDEA complaint as to five different issues. Specifically, it found MPS out of compliance with the IDEA in the following areas: failure to complete Multi disciplinary-team (M-team) evaluation process in a timely manner, failure to have Individualized Education Program (IEP) teams develop placements, failure to document consideration of least restrictive alternative (LRE) in placement offers, assignment of special education aide to function as general security aide for building, and failure to conduct IEP meetings with all the required participants.
52. It took DPI 148 days to investigate the group IDEA complaint and issue its

findings. MPS did not submit a corrective action plan (CAP) until 95 days later. However, that CAP was not accepted by DPI as DPI did not concur that the CAP would remedy the substantiated IDEA violations.

53. Since that time, DPI has substantiated 108 violations of the IDEA after investigating further IDEA complaints against MPS. Included in those violations are 15 violations of IDEA evaluation and reevaluation procedures, 21 violations of IDEA placement procedures, 8 violations of transportation procedures, 44 violations of IEP procedures, 13 violations of absence and suspension procedures, and 7 miscellaneous other IDEA violations. (See MPS IDEA Substantiated Complaint Summary, 1994, September 2001 attached hereto as Ex. A).
54. As recently as May 11, 2001, DPI informed MPS by letter, that MPS had failed to comply with DPI orders regarding issuance and implementation of corrective action plans (CAPS) which DPI had ordered pursuant to substantiated IDEA complaints. (See letter from Stephanie Petska to Carol Topinka, dated May 11, 2001, attached hereto as Ex. B).
55. Under the IDEA, DPI also has the obligation to monitor the performance of all LEAs, separate from its duty to investigate complaints.
56. In its 2000 monitoring report DPI found that MPS had systemic IDEA violations in 10 separate areas and ordered MPS to remedy those violations. (See 2000 monitoring report, attached hereto as Ex. C)
57. In its 2001 monitoring report, DPI found that MPS had systemic violations in 19 areas. In 2000 DPI found that MPS had systemic violations in 10 areas, 4 of

which were the same as DPI found in its 2001 monitoring report and 3 of which DPI failed to review in the 2001 report. (See 2001 monitoring report, attached hereto as Ex. D, and Summary Comparison of 2000 and 2001 DPI monitoring reports, attached hereto as Ex. E).

58. Given the systemic violations of the IDEA which DPI has repeatedly found in MPS, but defendants have failed to remedy, the IDEA violations which the named plaintiffs allege are clearly capable of repetition, but evade systemic review if the named plaintiffs were required to exhaust administrative remedies.

FIRST CAUSE OF ACTION--IDEA VIOLATIONS--MPS DEFENDANTS

59. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.
60. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and Spence Korte, have collectively failed, as to each named plaintiff as well as to all children who are residents of the Milwaukee Public School district and are eligible for special education and supports and services, to insure compliance with the IDEA.
61. Said failure has denied a free appropriate public education to each named plaintiff, and to children who are residents of the Milwaukee Public School district and are eligible for special education supports and services.

SECOND CAUSE OF ACTION--IDEA VIOLATIONS--DPI DEFENDANTS

62. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.

63. Defendants Department of Public Instruction and Elizabeth Burmaster, have failed to adequately insure that DPI has an adequate complaint investigation and monitoring system to insure that MPS complies with the IDEA sufficiently to provide a free appropriate public education to each named plaintiff, and to all children who are residents of the Milwaukee Public School district and are eligible for special education supports and services.

THIRD CAUSE OF ACTION-504 VIOLATIONS-MPS DEFENDANTS

64. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.
65. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and Spence Korte, have collectively failed to provide a free appropriate public education, as to each named plaintiff as well as to all children who are residents of the Milwaukee Public School district and are eligible for special education and supports and services, in violation of Section 504 of the Rehabilitation Act.

FOURTH CAUSE OF ACTION-504 VIOLATIONS-DPI DEFENDANTS

66. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.
67. Defendants Department of Public Instruction and Elizabeth Burmaster, failure to insure that DPI has an adequate complaint investigation and monitoring system to insure that MPS complies with the IDEA sufficiently to provide a free appropriate public education to each named plaintiff, and to all children who are residents of the Milwaukee Public School district and are eligible for special education supports and services, violates Section 504 of the Rehabilitation Act.

FIFTH CAUSE OF ACTION-SEC. 1983-MPS DEFENDANTS

66. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.
67. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and Spence Korte, as a result of their policies, procedures, practices, acts and omissions have denied each named plaintiff, and all children who are residents of the Milwaukee Public School district and are eligible for special education supports and services their substantive due process rights and have acted intentionally or with deliberate indifference and callous disregard of plaintiffs rights, privileges and immunities under the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. sec. 1983.
68. As a result of the policies, procedures, practices, acts and omissions of the defendants, the plaintiffs have suffered emotional and psychological distress, anxiety, injury, pain and suffering due to defendants' misconduct.

SIXTH CAUSE OF ACTION-SECTION 1983-DPI DEFENDANTS

69. Plaintiffs restate and reallege paragraphs 1- 58, as if fully set forth herein.
70. Defendants Department of Public Instruction and Elizabeth Burmaster, as a result of their policies, procedures, practices, acts and omissions have denied each named plaintiff, and all children who are residents of the Milwaukee Public School district and are eligible for special education supports and services their substantive due process rights and have acted intentionally or with deliberate indifference and callous disregard of plaintiffs rights, privileges and immunities under the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. sec. 1983.

71. As a result of the policies, procedures, practices, acts and omissions of the defendants, the plaintiffs have suffered damages due to defendants' misconduct.

PRAYER FOR RELIEF

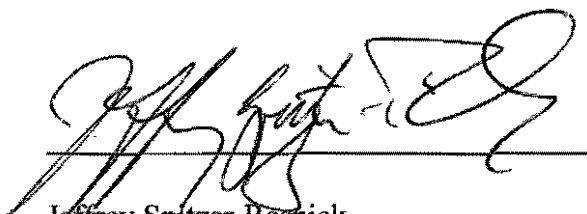
Wherefore, plaintiffs, on behalf of themselves, and all other similarly situated children who are, or during the pendency of this litigation, will be, residents of the Milwaukee Public School district and are, or will be, eligible for special education supports and services, hereby request that the court:

1. Certify a class of children who are, or during the pendency of this litigation, will be, residents of the Milwaukee Public School district and are, or will be, eligible for special education supports and services from Milwaukee Public Schools.
2. Enter a preliminary injunction which orders the Milwaukee Public Schools to provide a free appropriate public education in the least restrictive environment to all named plaintiffs.
3. Enter a preliminary injunction which requires the Department of Public Instruction to pay for a Special Master who will oversee the Milwaukee Public School district's implementation of the IDEA as to all children who are, or during the pendency of this litigation, will be, residents of the Milwaukee Public School district and are, or will be, eligible for special education supports and services.
4. Enter a preliminary injunction which requires Milwaukee Public Schools to ensure for each of the named plaintiff, and all children who are residents of the Milwaukee Public School district and who are eligible for special education services and supports that their disabilities are evaluated in a timely manner, their

placement is a team decision including parents, that appropriate transition planning and services are provided to all students age 14 and older, that IEP teams are properly composed and procedural safeguards are followed, that children are not removed or constructively removed for ten days or more without a functional behavioral assessment being done and the IEP team reconvened, and that services are provided in the least restrictive environment appropriate to the needs of the child.

5. Order compensatory education for any time period when IDEA was found to be violated.
6. Order the defendants to collectively pay for plaintiffs' attorneys' fees and costs.
7. Order any other relief that the court deems necessary and just.

Dated this 13th day of September, 2001.



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