

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

EASTERN DISTRICT OF WISCONSIN
SPERON B. NEDILSKY
CLERK

JAMIE S., MELANIE V., BRYAN E., BIAGIO R. by their parents
and next friends, KINA K., JANE P., PETER V., BRIDGET E., and
DEBRA W., on their own behalf and on behalf of a class of similarly
situated persons.

Plaintiffs,

v.

Case No. 01-C-028

MILWAUKEE BOARD OF SCHOOL DIRECTORS,
MILWAUKEE PUBLIC SCHOOLS, and WILLIAM ANDREKOPOLOUS,
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.

AMENDED COMPLAINT

Plaintiffs allege as follows:

INTRODUCTION

1. This is a civil rights action brought on behalf of a class of those students eligible
for special services who are, have been or will be denied or delayed entry into the

special education process which result in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student. This includes student 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. and Section 504 of the Rehabilitation Act of 1973. The purpose of this action is to compel the defendants Milwaukee Board of School Directors, Milwaukee Public Schools, Milwaukee Public Schools Superintendent William Andrekopoulos, 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 William Andrekopoulos 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. At the time this action was originally filed Plaintiff Jamie S., was eight years old and she was a resident of the Milwaukee Public Schools district. Jamie S. has a cognitive disability and is eligible for special education and related services. In

the school years 1998-2001 she attended Emerson Elementary. Her mother Kina 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.

b. Melanie V. is fourteen years old and a resident of the Milwaukee Public School District. Melanie V. has a mental illness and is eligible for special education and related services. Melanie V. currently attends the Milwaukee School of the Languages. Her parents Jane P. and Peter V. are acting on behalf of Melanie as her next friends and represent her in this action pursuant to the provisions of Rule 17 (c) Federal Rules of Civil Procedure.

c. Bryan E. is fifteen years old and a resident of the Milwaukee Public School District. Bryan E. has a learning disability and is eligible for special education and related services. Bryan E. attends John Marshall High School. His mother Bridget E. is acting on behalf of Bryan as his next friend and is representing him in this action pursuant to the provisions of Rule 17 (c) Federal Rules of Civil Procedure.

d. Biagio R. is five years old and a resident of the Milwaukee Public School District. Biagio R. has not yet been determined eligible for special education despite extensive medical documentation of significant mental illness and behavior related problems. These include bi-polar disorder, attention deficit disorder and oppositional defiance disorder. His parent, Debra W. is acting on behalf of Biagio as his next friend and represents him in this action pursuant to the provisions of Rule 17 (c) Federal Rules of 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 MBSD 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 WILLIAM ANDREKOPOULOS 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, Jamie S., Melanie V. Bryan E. and Biagio R. 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 2002 count reported by Milwaukee Public Schools to the Department of Public Instruction was 16,021 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 appropriate referral and evaluations

resulting in a 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 and the state is obligated to see that all children with disabilities residing in the State, including children with disabilities attending private schools, regardless of severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. 20 U.S.C. §§ 1400(d), 1401 (8), and 1412(a)(1) and (3).
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). A recipient of federal funds that operates a public elementary or secondary education program or activity shall annually (a) undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education and (b) take appropriate steps to notify handicapped person and their parents or guardians of the recipient's duty under this subpart. 34 C.F. R. § 104.32.

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. 115.77 (1m) Wis. Stats. and 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. 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).
22. In order to carry out its responsibilities under the IDEA, the SEA must monitor the LEA for compliance with IDEA requirements. 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

23. Over 16,000 students in Milwaukee Public Schools are children with disabilities

as defined by IDEA or Section 504. Approximately 3% of students are referred for special education evaluations each year and more may be eligible for such evaluations. Defendants have established a system that fails to provide many of these student with the free appropriate public education to which they are entitled because they are not effectively and timely evaluated and because the required participants are not included in the initial IEP team meeting.

24. Defendants have adopted practices and procedures which fail to ensure timely, procedurally proper, and adequate evaluations and individualized education plans for children with disabilities.

NAMED PLAINTIFFS

25. Each of the named plaintiffs has been injured by the aforesaid practices and policies of the defendants.
26. a.) 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.

b.) Melanie V. is a fourteen year old girl with mental illness. She attends the Milwaukee School of the Languages. Beginning in sixth grade, 2001-2002.

Melanie had great difficulties with depression and failed her classes having to repeat sixth grade again. She was frequently absent and was not able to complete homework. During that year her mother, Jane, was in frequent contact with the school psychologist to try and figure out ways to help Melanie. There was no mention of evaluating Melanie for special education by school staff and her parents didn't know that type of help might be available to Melanie. Melanie struggled through her second year of sixth grade with barely passing grades.

In September of 2003, Melanie had progressively more and more problems with behaviors at school. By October of 2003, her mother had been contacted by the school to say they had called the police to have Melanie taken down to the Milwaukee County Mental health complex. She was kept there on a seventy-two hour hold then released to her mother with medications for depression. The school had called the police because Melanie had told the school psychologist that Melanie felt like she wanted to kill people. When she returned to school there was no suggestion to her parents to have her evaluated for special education.

She had failing grades and never did or turned in homework. By November of 2003, the school called again to say Melanie had been taken by the police to the Milwaukee County Mental Health Complex. This time Melanie had shown the

school Psychologist where she had been "cutting" her arm. Again, nobody suggested to her parents that Melanie be referred for a special education evaluation.

In December 2003, Melanie found a piece of glass and a box cutter type razor blade and showed Ms. Kinney and then met with the school psychologist. Melanie admitted to using them to cut her arms. Again the police were contacted and Melanie was brought to the Milwaukee County Mental Health Complex. At this time Melanie was suspended from school for 5 days and a central office hearing was initiated to determine if Melanie should be expelled from school.

During the hearing, Jane asked about referring Melanie for special education and asked about the school's obligation for child find. She was directed to the student handbook and was told that was her responsibility. Finally, Melanie was referred for an evaluation by her mother and found eligible in January of 2004.

c.) Bryan E. is fifteen years old with learning disabilities. He attends John Marshall High School. Bryan has a long history of failing grades and absenteeism from school. All through Middle School his grades were nearly all failing. When he was in sixth grade Bridget, his mother, frequently contacted the principle of Bell Middle School where he was attending, His mother asked the Principal on several occasions if there was any testing that could be done to help figure out what was going on with Bryan. Bridget was told there was no testing available. Bryan began to be suspended frequently. He was gone from school so often that at one point the school social worker came to Bryan's home to meet with Bridget to

see why Bryan was missing so much school. His mother was concerned as well and contacted the Principal again asking about possible testing for Bryan. She was told that the Principal was not aware of any testing that could be done for Bryan. He was passed on to ninth grade and High school. His mother didn't want him to be passed on since he did not have any passing grades. She changed his placement from Washington to John Marshall. His mother contacted the new school staff again for some type of testing to help Bryan. She made a written request and brought it to the school after contacting WCA. Finally Bryan was evaluated and found eligible for Special Education in January of 2004. However, Bridget had surgery and was not able to attend the date the first IEP meeting was scheduled. The school offered her no alternative means to participate or find out her concerns. Bryan was not a participant either. The initial IEP was determined and written without their input or participation.

d.) Biagio R. has had a long history of mental health problems and associated behaviors related to his mental health. These include several hospitalizations and subsequent diagnosis of Bi-polar disorder, attention deficit disorder and oppositional defiance disorder. He is currently involved in an intense day treatment program at Child Dynamics to assist with his behaviors.

Biagio had been attending a private school but when behaviors became too problematic his mother removed him and requested a special education evaluation through the Milwaukee Public Schools from Emerson Elementary, his neighborhood school. His mother shared all the medical interventions and mental

health diagnosis with the school staff. Despite this, he was not evaluated for special education needs for emotional disabilities. Instead he was evaluated for Other Health Impairment and Speech and Language Disorder. His mother was told he did not meet eligibility for either of these categories because they were not legally allowed to observe Biagio at Child Dynamics and they were not able to observe him much at school because he wasn't attending at that time.

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

27. Pursuant to its obligation to adequately monitor the performance of LEAs in Wisconsin, DPI accepts complaints which allege IDEA violations by LEAs.
28. 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").
29. 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.
30. DPI substantiated the group IDEA complaint as to five different issues. Included among those five were findings that MPS was out of compliance with the IDEA due to failure to complete Multi disciplinary-team (M-team) evaluation process in

a timely manner, and failure to conduct IEP meetings with all the required participants.

31. 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.
32. Since that time, DPI has substantiated dozens more violations of the IDEA after investigating further IDEA complaints against MPS. Included in those violations of IDEA evaluation and reevaluation procedures, and violations of IEP procedures. (*Wisconsin Department of Public Instruction, Special Education IDEA Complaints*, <<http://www.dpi.state.wi.us/dpi/dlsea/een/complain.html>>)
33. Under the IDEA, DPI also has the obligation to monitor the performance of all LEAs, separate from its duty to investigate complaints.
34. In its 2000 monitoring report DPI found that MPS had systemic IDEA violations in 10 separate areas including the lack of LEA representation in the evaluation of the child including a meeting to determine if the child is a child with a disability, (this violation was again found in the 2001 monitoring report) and the failure to have parents participate in the review of the existing evaluation data and in identifying what additional data, if any, are needed to complete the (re)evaluation and contacting parents and affording them the opportunity to participate in the review of the existing evaluation data on the child and ordered MPS to remedy those violations. When those same factors were reviewed again two years later in

the 2002 monitoring, MPS was again found to systemic violations in these areas.

(See 2000-02 monitoring report summaries, attached hereto as Ex.B)

35. 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

36. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
37. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and William Andrekopoulos, 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, including its requirements for timely and effective evaluations and eligibility determinations.
38. 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

39. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
40. 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

41. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
42. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and William Andrekopoulos, have collectively failed to effectively and timely evaluate children with disabilities in order 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

43. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
44. 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

45. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
46. Defendants Milwaukee Board of School Directors, Milwaukee Public Schools and

William Andrekopoulos, 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.

47. 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

48. Plaintiffs restate and reallege paragraphs 1- 35, as if fully set forth herein.
49. 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.
50. 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

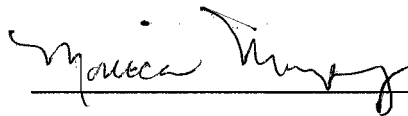
Wherefore, plaintiffs, on behalf of themselves, and all other similarly situated children who are, or during the pendency of this litigation, will be, residents of the Milwaukee Public School district and are, or will be, eligible for special education supports and services, hereby request that the court:

1. Certify a class of children who are eligible for special services who are, have been or will be denied or delayed entry into the special education process which result in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student.
2. Enter a preliminary injunction which orders the Milwaukee Public Schools to effectively and timely evaluate all children suspected of having a disability and ensure that all the proper participants including parents or guardians, and LEA representatives, participate in the meeting to review data and determine eligibility for services.
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, and that initial IEP teams are properly composed including participation by parents or guardians and LEA representatives. and procedural safeguards are followed.

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 3rd day of May, 2004.



Monica Murphy
Wisconsin Coalition for Advocacy
2040 W. Wisconsin Ave. Suite 678
Milwaukee, WI 53233
(414) 342-8700

Jeff Spitzer-Resnick
Wisconsin Coalition for Advocacy
16 N. Carroll St. Suite 400
Madison, WI 53703
(608) 267-0214