2000 WL 34542950 (E.D.Ark.) (Trial Pleading)
United States District Court, E.D. Arkansas.

David BRADLEY and his parents and next friends Thomas Bradley and Dianna Bradley, individually and on behalf of all others similarly situated, Plaintiffs,
v.
ARKANSAS DEPARTMENT OF EDUCATION, Raymond Simon, in his official capacity as Director of the Department, as well as individually, Diane Sydoriak, in her official capacity as Director, Special Education and individually, Marcia Harding, in her official capacity as Acting Associate Director, Special Education and individually; Mike Crowley, in his official capacity as Administrator for Special Education Monitoring and Technical Assistance and individually; and the Williford School District No.39, its Superintendent and Board, respectively, Bruce Evans, Clinton Madison, Rodney Despain, Jeff Goings, Don Coggins, and Eddie Gray and in their official and individual capacities, Defendants.

C.A. No. 4-00-CV-00747 GTE.
October 12, 2000.

Complaint-Class Action

I. INTRODUCTION

1. Despite the requirements of the Individuals with Disabilities Act, originally enacted as the Education for All Handicapped Children Act of 1975, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act and the regulations thereunder, State and district defendants have each violated their duties to provide to David Bradley and to school-age young people who are similarly situated, the following:

1. A free appropriate public education (20 U.S.C. §§ 1412(a)(1) and (2));

2. An integrated public education (§ 1412(a)(5));

3. An education program reasonably calculated to enable the child to receive real educational benefits, including at least grade level to grade level educational progress *Sch. Bd. of Hendrick Hudson v. Rowley,* 102 S.Ct. 3034 (1982)) and which meets State's education standards including but not limited to their standards requiring a certain number of hours of instruction per day and days per school year (§§ 1412(a)(1) and (2), 1401(8)(B) and (C);

4. The acquisition by state and by the district, and the dissemination to teachers, administrators, school board members and related services personnel of significant knowledge derived from education research and practice, and their adoption of promising education practices, materials and technologies (§ 1412(a)(14), 1413(a)(3), 1453(c)(3)(D) (viii); pre-1997: §1413(a)(3(B));

5. An individualized education program, including but not limited to, a statement of transition service needs, necessary since David was fourteen, that focuses on the child's courses of instruction such as advanced placement courses or a vocation education program (§§ 1412(a)(4) 1414(d)(1)(A)(vii), as well as extracurricular and other non-academic activities (§ 1414(d)(1)(A)(vii)(II)).

6. Privacy and confidentiality (§ 1412(a)(8), 1417(c));

7. Full procedural safeguards (§ 1412(a)(5) including but not limited to:

(a) the opportunity to obtain an independent educational evaluation of the child at public expense (§§ 1412(a)(6) and 1415(d)(2)(A); pre-1997: § 1415(b)(A));

(b) the right to present evidence and to confront, cross-examine, and to compel the attendance of witness (§ 1415(h)(2); 34 C.F.R. § 300-508(a)(2)) and successor regulations;

(c) the right to a prompt decision, not to exceed forty-five days from receipt of the request for a hearing 34 C.F.R. (§ 300-512(a) and its successor regulation);

(d) an impartial due process hearing (§ 1415(f)(1)); And State defendants have violated their duty to ensure that the requirements of the Disabilities Education Act are met by local education agencies (§ 1412(a)(11)).

2. The actions and inactions of defendants have wrongfully truncated and denied the effective education of David Bradley, have imposed enormous pain and expense upon him and his family, and have isolated him and his family from their school and school community from which they seek here injunctive, compensatory educational, and declaratory relief and damages.

3. This action is related to No. LR-C-96-1004. It arises from the same subject matter. It concerns continuing violations, events, and harms which have been the subject of Arkansas state due process hearings subsequent to those from which LR-C-96-1004 arose.

II. JURISDICTION AND VENUE

4. This being an action arising under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.;* Section 504, 29 U.S.C. § 794 *etseq.;* and the Americans with Disabilities Act, § 12161 *et seq.* as well as under 42 U.S.C. § 1983 to enforce the Constitution and laws of the United States, this Court has subject matter jurisdiction under 20 U.S.C. § § 1415(i)(3) and 1415(1) and under 28 U.S.C. §1331 and § 1343. Plaintiffs have exhausted their administrative remedies under 20 U.S.C. §1415. Plaintiff seek declaratory relief under 28 U.S.C. (§§ 2201, 2202), as well as prospective injunctive relief and an order for compensatory education against individual defendants in their official capacities, as well as against the State and local educational agencies. Plaintiffs also seek reimbursement of expenses, compensatory damages for economic loss and for pain and suffering as well as punitive damages against the State and local educational agencies and individual defendants in their individual capacities. Venue in this district is proper under 28 U.S.C. § 1391(b).

III. PLAINTIFFS

5. David Bradley is now nineteen years old. Since he was five, he has been identified as having autism. He is a person of large cognitive abilities and personal skills. During all of his school years since first grade, David Bradley has lived with his parents in the Williford School District and his education has been the responsibility of that district, and of the State of Arkansas.

6. Thomas and Dianna Bradley are the parents of David Bradley. They live at Route 1, Box 10A, Williford, Arkansas 72482.

7. David Bradley is a "qualified individual with a disability" within the meaning of the Americans with Disabilities Act, " a qualified person with a handicap" within the meaning of Section 504, and "a child with disabilities" within the meaning of the Disabilities Education Act.

IV. DEFENDANTS

8. The Arkansas Department of Education and Williford School District 39 are the responsible state and local educational agencies, respectively, under the Disabilities Education Act. Each receives federal funds under that Act and other Acts of the United States. Each is a public entity within the meaning of Title II of the Americans with Disabilities Act. Each is sued for injunctive and compensatory relief and for damages. The violations of law complained of below are "so severe pervasive and

objectively offensive" that they have denied and continue to deny "the equal access to an appropriate, integrated, and procedurally safeguarded education" which the three Acts are "designed to protect." *Davis v. Monroe County Bd. of Educ.,* 119 S.Ct. 1661, 1675 (1999). They constitute gross violations.

9. Raymond Simon, Diane Sydoriak, Marcia Harding, and Mike Crowley are officials and employees of the Arkansas Department of Education occupying, respectively, the following positions: Director of the Department; Associate Director, Special Education; Acting Associate Director, Special Education; and Administrator for Special Education Monitoring and Technical Assistance. Each is sued in his or her official capacity for injunctive relief. Each is sued individually for damages. The violations of law complained of below, each and all together, you so severe, pervasive and objectively offensive that they have denied and continue to deny the equal access to an appropriate, integrated and procedurally safeguarded education which the three Acts are designed to protect. They are gross violations of law. Each knew or should have known of them, and could have corrected them yet remainede] idle." *Ibid.*

10. The Superintendent and Members of the Board of Education are, respectively, Bruce Evans and Clinton Madison, Rodney Despain, Jeff Goings, Don Coggins, and Eddie Gray. The further allegations made at ¶9 above as to Department officials are made here with respect to School District officials as if set forth here in their entirety.

V. CLASS ALLEGATIONS

11. Plaintiffs sue on behalf of themselves and two classes of persons similarly situated: (1) the class of all children school age with disabilities of and their families who have been, are being or in the future will be denied (a) their right to decision of their due process complaint within 45 days, (b) the opportunity to confront, to cross-examine and to compel the attendance of witnesses at due process hearings or (c) their right to an impartial hearing; and (2) the class of all children of high school, middle school or late primary school age who have been identified as having autism, asperger's syndrome, or pervasive developmental disorder and who have high cognitive abilities but who have been, are being or in the future will be denied an education (a) which is both appropriate and integrated, as to both academic and extracurricular activities, (b) which provides for participation and progress in the general curriculum and (c) which utilizes promising and proven educational practices.

12. In each regard, State defendants have acted and failed or refused to act on grounds generally applicable to each of the classes, thereby making injunctive and declaratory relief applicable to the classes as a whole. Plaintiffs will fairly and adequately protect the interests of the classes.

13. The class members, in common, are (1) persons who have requested, or will request, impartial due process hearings but have experienced, or will experience, one or more of the impartial due process hearing violations suffered also by Plaintiffs here, and (2) persons with similar configurations of disabilities and ages who have not been, or will not be, provided an appropriate, integrated education, integrated extra curricular activities, participation and progress in the general curriculum or the benefit of promising and proven educational practices.

14. Plaintiffs' counsel are experienced and competent to represent the class.

15. The classes as set forth above are proper for certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

VII. THE BASIC PEDAGOGICAL FACTS

16. Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced, long since, to the point that State and local educational agencies can meet the special education needs of children with disabilities, including particularly those young people with autism, asperger's syndrome, or pervasive developmental disorder.

17. Replicable research and experience has identified proven methods of teaching and learning for children with disabilities, including particularly young people with autism, asperger's syndrome, or pervasive developmental disorder.

18. If a state or district should identify, acquire, disseminate, choose among, and adopt and utilize proven, promising educational practices for the instruction of young people with autism, asperger's syndrome, or pervasive developmental disorder, such young people can participate and progress in the general curriculum at least to grade level, in the regular educational environments with their peers, including successfully taking advanced-placement courses and vocational education programs and can secure the educational benefit of high expectation and quality teaching and learning.

VIII. STATE AND DISTRICT DEFENDANTS' VIOLATIONS OF THE BASIC PEDAGOGICAL REQUIREMENTS OF THE ACT

19. Despite the requirements of Sections 1412(a)(14) and 1453(c)(3)(D)(vii) (formerly, before the 1997 Amendments, at § 1413(a)(3)(B)) which bind State defendants and the requirements of Sections 1413(a)(3) and 1453(C)(3)(D)(vii) which bind School District defendants, neither has identified, acquired, disseminated, chosen among, and adopted educational practices that have proven effective in the education of young people with configurations of disabilities such as David Bradley's.

20. Neither the State's current nor its preceding Plan for "its Comprehensive System of Personnel Development," albeit required to do so since 1975, identifies, by name or otherwise, even one promising educational practice or proven method of teaching and learning, let alone for the effective instruction of young people with autism, asperger's syndrome or pervasive developmental disorder, nor does the State's "Plan" adopt any.

21. Neither in the implementation of their "Plan" for a "Comprehensive System of Personnel Development," nor otherwise, have State defendants acquired, disseminated, or adopted such systematic knowledge as would enable School District defendants effectively to educate David Bradley.

22. Nor have School District defendants carried out their own, independent duty to do so.

22a. The point is *not* that defendants have not chosen a particular proven method of teaching and learning; rather, among the many available proven methods of teaching and learning, defendants have not chosen or used any method at all.

22b. Defendants' omission and failure to do so-persistently and pervasively throughout the schooling of David Bradley since seventh grade-violate the Disabilities Education Act, §§ 1412(a)(14), 1413(a)(3), 1453(c)(3)(D), as well as the Section 504 and the ADA.

23. In part because of the aforesaid violations of their duties, State and district defendants have each failed to provide to David Bradley (in the case of the district) and failed to ensure the provision to him (in the case of the State defendants) of:

(a) an integrated education, i.e.; the education of David Bradley with non-disabled children, in the educational environments (academic and extracurricular) where non-disabled children are regularly educated;

(b) an appropriate education, i.e., one reasonably calculated to yield real educational benefits, across the general curriculum, grade level to grade level;

(c) an education which in duration, coverage and intensity meets the State own standards.

24. Instead, the "education" of David Bradley designed and imposed upon him by action (district defendants) and by default (State defendants) has:

(a) excluded him altogether from Williford's classrooms and schools, thus isolating him entirely from his peers, let alone from learning and playing and growing with them;

(b) deprived him of instruction and hence learning in large parts of the high school curriculum provided to the general students and required by Arkansas State standards for a high school education;

(c) provided "home-bound" instruction for hours per days, and per week, and days per school year which are far less than the

hours and days of instruction required by the Arkansas State standards themselves.

25. School personnel who have provide even that unlawfully truncated instruction which has been provided, however amiable and well-intentioned particular personnel may be, have not been professionally qualified, adequately prepared or supported to teach a person of David's disabilities and potentials.

26. Such appropriate and integrated instruction as David Bradley has received-for example, courses in performance art and in computer drawing at Jonesboro, in which he excelled -has been at the initiative and the persistence of his parents and himself, and occurred only because they made the arrangements, drove him both ways, and themselves informed and supported the teachers and David in the teaching and learning, foregoing jobs, income and other opportunities and necessities.

27. Similarly such academic instruction as David Bradley has received "home-bound" has been with computer-based materials, in history and mathematics, identified by his parents, usually gotten by them, (including, in return for strong computer materials by the family appearing in advertisements by a national computer teaching and learning company) and more often than not used by them to teach David, not by the district assigned personnel.

28. In addition to their violations of §§ 1412(a)(14) and 1413(a)(3), State and district defendants, each and all, have violated and continue to violate the Disabilities Education Act, as well as Section 504 and the ADA, by denying David Bradley:

(a) an appropriate education (§§ 1412(a)(1) & (2) and 1413(a)(1))

(b) an integrated education (§§ 1412(a)(5) and 1413(a)(1);

(c) participation and progress in the general curriculum (§ 1414(d)(1)(A);

(d) sufficient hours and days of instruction, and sufficient subject matter coverage to meet State education standards (§ 1401(8)(B) & (C);

(e) transition plans) beginning at age 14 that focus on the child's courses of study (and that secure (a), (b), (c) and (d) above) (§ 1414(d)(A)(1)(vii) and (3)(A) & (B)(i) & (v)).

XI. THE REQUIRED PROCEDURAL SAFEGUARDS AND DEFENDANTS' VIOLATIONS THEREOF

29. The other inquiry-in addition to the substantive educational inquiry, pleaded above-required under the Disabilities Education Act, Section 504 and the ADA, is: has the State, and the district, complied with the procedurals safeguards set forth in the Act? *Board of Education of the Hendrick Hudson, et al. v. Rowley,* 102 S.Ct. 3034 (1982).

30. The Act emphasizes the participation of the parents in developing the child's educational program and assessing its effectiveness. Recognizing that this cooperative approach would not always produce a consensus between school officials and parents, and that in any disputes the school officials would have a natural advantage, Congress incorporated a set of what it labeled "procedural safeguards" to insure the full participation of the parents and proper resolution of substantive disagreements. *School Committee of the Town of Burlington v. Massachusetts Dept. of Education,* 105 S.Ct. 1996, 2002 *(1985).*

31. The Act, § 1415, and its regulations, 34 C.F.R. § 300.512(a) and its successor require that the State education agency ensure that a due process hearing is held and a final decision is reached within 45 days of the receipt of the parents' request for a hearing.

32. In No. LR-C-96-1004, the predecessor case before the Court to which the claims here are related, the Bradley family complained of a wrongful screening procedure used by the hearing officer which, among other things, resulted in final decision well after the 45 day limit.

33. Upon a complaint from the Bradley family to the United States Department of Education concerning that matter, as the

papers appended to Arkansas Department of Education's own Response to Plaintiffs' Motion for Partial Summary Judgment and Counter-Motion for Summary Judgment, filed in LR-C-96-1004 on October 14, 1997 show, the United States Department found Arkansas' delay to violate the no-more-than-45-day rule.

34. As those papers filed by the Arkansas Department of Education in LR-C-96-1004 also show, Diane Sydoriak, the Department's Associate Director, Special Education, assured the United States that Arkansas recognized its 45 day obligation, would notify all hearing officers (again) to comply, and caused the federal office to conclude (Letter of May 9, 1997) "that all hearing officers in Arkansas will adhere to [the 45-day] policy." (Exhs. 3 & 2 to ADE Motions).

35. Nonetheless, three of the five subsequent final decisions of due process hearings initiated by the Bradley family and underlying this action were rendered *after* the expiration of 45 days: One, case No. H-98-17, issued March 23, 1998, was 39 *days overdue.* Another, case No. H-98-22, issued September 9, 1998, was 138 *days overdue.* A third, case No. H-99-16 (sic), issued December 2, 1998, was 6 *days overdue.* In addition, decision of an administrative complaint, C-97-14, which has a limit of 60 days, was issued 7 days past the limit; and another, C-FY 96-18, 16 days past the limit.

36. These failures and defendants' pattern of persistent failure to honor the 45 day limit violates 34 C.F.R. 300.512(a) and its successor regulation. Compare footnote 1 of the Court's November 21, 1997 Opinion in No: LR-C-96-1004.

37. State defendants' continue to fail to provide or to pay for independent evaluations: here, assistivetechnology evaluation (case No. H-98-14); independent comprehensive evaluation (case No. H-98-17); payment for psychiatrist appointment (H-98-22), in violation of § 1415(d)(2)(A) and 34 C.F.R. § 300.500 *et seq*. They continue to do so despite the districts' failure itself to request a due process hearing, thus continuing to violate 34 C.F.R. § 300.506 and its successor regulation. Compare footnote 3 of the Court's November 21, 1997 Opinion in No. LR-C-96_1004.

38. Throughout, State defendants fail to afford families cross examination rights and the right to compel the attendance of witnesses at due process hearings, in violation of 34 C.F.R. § 300.508(a)(2) and its successor. Compare footnote 2 of the Court's November 21, 1997 Opinion in No. LR-C-96-1004.

39. Hearing officers who are generously compensated by the State are assigned, their appointments are renewed, and new assignments are made by State defendants or their agents, who themselves have an interest in the outcome(s) of due process hearings. Hearing officers include current employees of school districts, and former or retired school district employees, who cannot help but reflect, 'this may be applied also to my district' or 'it may bind my old friends,' 'will they like it?' Hearing officers include persons who are past, present, and future grantees or contractors of the Department who are selected by State defendants or their agents. There are many alternative hearing officer systems which do not raise partiality questions. The current system violates the impartiality requirement of § 1415(f)(1) and the Due Process Clause of the Fourteenth Amendment of the Constitution.

40. School districts have lawyers available to them, both to represent them in due process hearings and, where their lawyers do not formally appear, to advise them on their conduct of a due process hearing. The cost of school district lawyers is met through public funds, including State education funds, or by school district insurance policies. Such repeat-player counsel can and does develop considerable expertise, fluency and familiarity with due process hearings. In addition, State defendants, on information and belief, provide or defray the cost of systematic training for school district counsel. Families, in contrast, typically do not have lawyers available to them, let alone State trained or retainer-paid lawyers, except at great cost to themselves, often, as with the Bradley family, only by extraordinary stretch of family resources, sometimes, as with plaintiffs here, to the financial breaking point. This systematic difference of capacity between families and districts in due process hearings deprives such hearings of impartiality in violation of Section 1415(f)(1) and the Due Process Clause of the Fourteenth Amendment of the Constitution.

X. THE HARM DONE BY DEFENDANTS' VIOLATIONS TO THE BRADLEY FAMILY

41. The serious, pervasive and persistent violations of the Act by State and district defendants which are set forth above and here below have deprived David Bradley of grade level educational benefit and instead have grievously delayed and diminished his preparation for employment and independent living causing him as well as his parents great pain and suffering

and economic loss.

42. To the full extent that David Bradley's extraordinary talents have flourished at all, it has been despite State and district defendants, in the teeth of their violations and the hostile educational environment they have generated and maintained, and by dint of the undertakings of a knowledgeable, persistent mother and father who, at great economic and personal cost and to the harm of their earnings, their careers and occupations, their retirement, and their community relationships, have sought to supply, and have supplied, some of the educational deficits imposed by defendants' violations.

43. State and district defendants' failure to provide an appropriate education to David Bradley and their failure to provide qualified, adequately prepared personnel, knowledgeable in and utilizing promising educational practices, to teach and to support him and defendants' concomitant generation, maintenance, and failure to correct an educational environment hostile to David Bradley and to his parents caused him to become severely uncomfortable in school, fearful of being there, inattentive to learning and a significantly less productive student.

44. When David Bradley's parents began proactively to challenge the inappropriateness and inadequacy of defendants' "education" of him and to seek changes in his education program and related services and supports from teachers and responsible district officials and administrators through complaints to them and to responsible State educational officials and in State due process hearings, defendants generated, maintained, and failed to correct a hostile educational environment, and in the case of State defendants who knew or should have known of the aggravated circumstances in the district, failed to act to correct them or to ensure their correction and themselves participated in sustaining the hostile environment, including *inter alia:*

(a) convening public meetings where Williford residents and parents of other Williford children were invited, and encouraged, to complain about David Bradley's presence in the school, the potential provision to him of a free appropriate public education, its supposed large cost to the district, and the supposed funding shortfalls and inadequate education thus supposedly visited upon other pupils, holding David Bradley and his parents up to public anger and hostility;

(b) contributing to, and, on information and belief, securing, newspaper articles reaching the entire Williford Community with the same assertions and the same effects;

(c) failing to correct the mistaken reports and even the quotations attributed to them which contained incorrect and inflammatory assertions and private, confidential information;

(d) posting and allowing to be posted publically in the school, and otherwise to be circulated, individual education programs and other private and confidential information concerning David Bradley, his disability and his education;

(e) tolerating, failing to correct and, at least by omission, encouraging the expression of ridicule, irritation and hostility by students and school personnel about, toward, and to David Bradley.

(f) tolerating, failing to correct, and, at least by omission, encouraging the isolation of David Bradley from school and from his fellow students, including those who had previously been his particular friends;

(g) indulging derision of the Bradley parents by members of the "school community";

(h) charging Mr. Bradley and causing his arrest on charges of "terroristic threat" when he said he would sue school officials of which charges at trial, Mr. Bradley was found not guilty;

(i) charging Mr. Bradley and causing his arrest on truancy charges when David was too fearful to go to school and using that charge to impose inadequate and unlawful home-bound instruction and to exclude David from their schools;

(j) indulging the isolation of the whole Bradley family within the Williford community.

45. The statements of fact set forth in the attached article by Thomas Bradley, "Diary of A Dad Up Against the Four D's" published in a special issue on Special Education by Mouth Magazine (May-June 2000) pp. 28-33, are incorporated herein as

if set forth here in their entirety.

46. When defendants failed to supply an appropriate educational program and related services and supports as well as qualified, adequately prepared personnel, leaving David without cues and other supports necessary to his engagement in learning, each of the Bradleys offered to, and did, themselves accompany him in school to supply the deficit, to support him, and to help him overcome his fear and discomfort, sometimes in classroom, sometimes by being nearby in the hallway.

47. Throughout this experience each of the Bradleys was met with hostility, by word, by gesture, and by expressed attitude; for example, one morning the bench they used in the hallway had been replaced by a toilet bowl labeled, for the Bradleys.

48. The defendants unauthorized disclosure of confidential information, data and records by defendants and their agents was contrary to the duties of State and local education agencies, and individual defendants and violated the Disabilities Education Act §§ 1412(a)(8), 1413(a)(1) and 1417(c) and the regulations thereunder, in particular 34 C.F.R. §§ 300.571,300.572 and 300.127(a) and 300.504(a)(b) (2000) and their predecessor regulations, as well as violating Section 504 and the ADA.

49. The hostile education environment generated, uncorrected and maintained by State and district defendants has deprived David Bradley of a free appropriate public education in violation of the Disabilities Education Act § 1412(a)(1), Section 504 and the ADA, and has deprived his parents of their rights to participate effectively in decisions concerning the design, delivery and evaluation of the education program delivered (or not) to their son in violation of § 1412(a)(4) and (6), 1414, and 1415, Section 504 and the ADA. *Cf. Board of Educ. of Com. Consol. S.D. v. Illinois State Board of Education,* 938 F.2d 712 (7th Cir. 1991).

50. Defendants' actions constitute unlawful retaliation, coercion, intimidation, threat, and interference on account of the exercise by the Bradleys of their educational rights which are protected by the Americans with Disabilities Act, on account of their challenges to acts and practices made unlawful by the ADA and on account of their participation in investigations, proceedings and hearings required under the ADA, each and all in violation of the Americans with Disabilities Act, 42 U.S.C. § 12203.

51. In consequence of defendants' actions and inactions:

(a) David Bradley has been deprived of his rights to a free and integrated public education, to participate and progress in the general curriculum, grade level to grade level, and to have the educational benefit of the acquisition, dissemination, choice among, and adoption and utilization of proven methods of teaching and learning, to a course of study and hours and days of instruction which meets Arkansas' own high school standards, and to a carefully considered focus on courses of study including advanced-placement courses and a vocational education program, causing him the loss of timely, appropriate, grade level education, great pain and suffering and economic loss.

(b) David Bradley has been isolated from his school and age peers in the Williford School District and in the Williford community, causing him loss of social development, personal opportunity, including opportunities to contribute to his community, and causing him as well as his family great pain and suffering and economic loss;

(c) Thomas and Dianna Bradley have been isolated from the Williford School community as well as from the larger Williford community altogether, causing them, for example, to have to discontinue their ties to their church; subjecting them to death threats, the laceration of automobile tires, and public obloquy, and everyday to be unseen and unspoken to as they go about their daily rounds, causing them great pain and suffering.

(d) the Bradley have had, out of pocket, to pay lawyers fees (in one of the due process hearings before the Court in LR-C-96-1004), insurance costs, evaluation and other consultation costs, and the unreimbursed costs of supplying transportation, materials and educational opportunities not provided by defendants;

(e) the Bradleys have suffered the loss of the opportunity to enjoy Mr. Bradley's retirement from United States Army Corps of Engineers and the necessity instead to earn additional income but the concomitant limitations imposed upon jobs and income by the necessity, imposed by defendants' derelictions, to supply as much as they can (and more) of the education defendants have denied their son, causing Thomas and Dianna Bradley pain and suffering and economic loss.

52. In consequence, plaintiffs seek under the Disabilities Act, 504 and the ADA, injunctive and declaratory relief, compensatory education, the reimbursement of out-of-pocket expenditures and compensatory and punitive damages.

XII. REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Determine that the action may proceed as a class action;

2. Declare State and district defendants to have violated in the particulars set forth above, the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act as well as the Fourteenth Amendment of the Constitution;

3. Enjoin State and district defendants from each of their violations of the three Acts and the Constitution; particularly including but not limited to enjoining them from failing to acquire and disseminate significant knowledge of promising educational practices and proven methods of teaching and learning, from failing to choose among them and to adopt such promising and proven methods and practices for the education of David Bradley, and for the class of young people with autism, asperger's syndrome, or pervasive developmental disability;

4. Order compensatory education of such a nature and content and duration as may, as near as possible, compensate David Bradley for his exclusion from school and the denial to him of a free appropriate and integrated public education and participation and progress in the general curriculum to at least grade level;

5. Order the reimbursement to the Bradleys of the out of pocket costs, including but not limited to the cost of due process hearing attorney fees, transportation, materials and evaluations;

6. Award plaintiffs compensatory and punitive damages;

7. Award plaintiffs reasonable attorney fees for the proceedings here and for the proceedings in the United States Court of Appeals for the Eighth Circuit necessary to vindicate this Court's judgment and to establish for this Circuit that, consistent with the Constitution of the United States, the Disabilities Education Act may be enforced against the State of Arkansas and its Department of Education.

8. Grant such further relief as shall be just and proper.