

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ FEB 20 2004 ★

LONG ISLAND OFFICE

NATIONAL LAW CENTER ON HOMELESSNESS AND
POVERTY, R.I., individually, and as parent and natural
guardian of A.B., a minor child, M.W., individually, and as
parent and natural guardian of Da.W., Di.W., Dq.W., T.H. and
S.J., minor children, M.K., individually, and as parent and
natural guardian of S.P., a minor child, and T.K., individually,
and as parent and natural guardian of K.K., on behalf of
themselves and all those similarly situated,
Plaintiffs,

v.

Civil Action No. 04-CV ()

CV 04 0705

**CLASS ACTION
COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

STATE OF NEW YORK, NEW YORK STATE
EDUCATION DEPARTMENT, RICHARD P. MILLS (as
Commissioner of Education of the State of New York);
SHEILA EVANS-TRANUMN (as Associate Commissioner of
Education of the State of New York); PATRICIA MCGUIRK
(as Program Manager for the Homeless of the New York State
Education Department); NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE, ROBERT
DOAR (as Acting Commissioner of the New York State
Office of Temporary and Disability Assistance), SUFFOLK
COUNTY DEPARTMENT OF SOCIAL SERVICES, JANET
DEMARZO (As Commissioner Of The Suffolk County
Department Of Social Services), DAN HICKEY (As Associate
Commissioner Of The Suffolk County Department Of Social
Services), LONGWOOD CENTRAL SCHOOL DISTRICT,
HAMPTON BAYS SCHOOL DISTRICT, MIDDLE
COUNTRY SCHOOL DISTRICT, COPIAGUE UNION
FREE SCHOOL DISTRICT, SOUTH HUNTINGTON
SCHOOL DISTRICT, MEDFORD SCHOOL DISTRICT,
WILLIAM FLOYD SCHOOL DISTRICT, CENTRAL ISLIP
SCHOOL DISTRICT, BAY SHORE UNION FREE SCHOOL
DISTRICT, SOUTH COUNTRY SCHOOL DISTRICT,
BRENTWOOD SCHOOL DISTRICT, NORTH BABYLON
SCHOOL DISTRICT, AMITYVILLE SCHOOL DISTRICT,
RIVERHEAD SCHOOL DISTRICT and JOHN DOE
SCHOOL DISTRICTS 1-10,

Defendants.

SPATT, J.

LINDSAY, M.

INTRODUCTION

1. This lawsuit seeks to remedy the systemic failure of the education and social services systems in New York State and Suffolk County to provide homeless children within the county with access to a free, public education.

2. Few circumstances are more tragic than those faced every day by homeless children. Denying such children the same access to public school education enjoyed by other children makes it all the more difficult for such children to integrate into society and realize their potential as human beings. The Defendants—the persons and entities responsible for educating and providing social services to homeless children in Suffolk County, New York—have, by their neglect or in some instances malfeasance, added to the tragedy of homeless children by denying them appropriate access to a basic public school education.

3. The Plaintiffs in this case are homeless children and their parents living in Suffolk County who have been denied or are being denied or deprived of access to a free and appropriate public school education because of the Defendants' violations of the requirements of federal and state laws and regulations.¹ The consequence of the Defendants' conduct is that homeless children in Suffolk County are often turned away at the schoolhouse door, experience significant delays in enrolling in public school, or are denied access to transportation or other basic services that form the basic prerequisite for them to receive a public school education. This lawsuit seeks to break the Defendants' pattern of neglect, indifference and intransigence towards the homeless

¹ Plaintiffs are identifying themselves in this pleading and all other public documents filed in this case through initials only. Plaintiffs are minor children or parents of minor children, some of whom have been classified as having special educational needs. Accordingly, the named plaintiffs have requested identification by initials only in order to protect their privacy rights and the privacy rights of their minor children pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(b), 34 C.F.R. § 99.30 (1988), and the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*, 20 U.S.C. § 1417(c) (1988), 34 C.F.R. §§ 300.571, .572, .573. *See also Webster Groves School Dist. v. Pulitzer Pub. Co.*, 898 F.2d 1371, 1374-75 (8th Cir. 1990).

children of Suffolk County.

4. Plaintiffs bring this action on behalf of themselves and all others similarly situated, challenging the failure of the Defendants to comply with the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the "McKinney-Vento Act"), New York State Education Law § 3209 and the regulations promulgated thereunder and challenging Defendants' repeated violations of Plaintiffs' rights under the United States and New York Constitutions.

5. Upon information and belief there are numerous children in Suffolk County who are denied or deprived of access to the public school they are entitled to attend simply because they are homeless and because the Defendants, collectively and/or individually, have been responsible for a systemic failure to provide access to an education for homeless children in Suffolk County New York. The root cause of this situation is the Defendants' pursuit of practices and customs that, among other things, have resulted in a failure to:

- a. locate and ensure enrollment and the opportunity for educational success of homeless children in New York State and Suffolk County, New York;
- b. provide adequate, uninterrupted transportation assistance sufficient to enable such children to attend school;
- c. provide an opportunity for each homeless child to be immediately enrolled in the school that is in his or her best interest to attend while homeless—either the school of origin or the school nearest to where he or she is actually living, without regard to standard documentation requirements;
- d. provide parents of homeless children an opportunity to participate in determining the best interest of their children;
- e. comply with the wishes of homeless parents as to choice of school to the extent feasible;
- f. implement a meaningful plan to remove systemic barriers to homeless children's participation in public education;

- g. provide appropriate notice to parents or children in Suffolk County, of a child's legal right to remain in the school that the child attended when permanently housed or the school in which the child was last enrolled (the "school of origin") after becoming homeless;
 - h. afford homeless children and parents in Suffolk County appropriate notice of the availability of an ombudsperson and of their right to dispute school placement and transportation decisions.
 - i. grant ombudspersons the authority to enforce their decisions and requests for school districts to admit homeless children to school and/or provide homeless children with prompt, adequate and uninterrupted transportation or other necessary services;
 - j. provide for prompt, timely and effective dispute resolution procedures as is required by the McKinney-Vento Act;
 - k. coordinate emergency housing procedures and other social services requirements for homeless families with the procedures and requirements for attending public schools;
 - l. provide comparable services, including transportation services, to homeless children that are available to children who are not homeless;
 - m. review and revise policies, including transportation policies, that act as a barrier to the enrollment of homeless children in school; and
 - n. assess the special needs of homeless children and youth.
6. As set forth more fully herein, Plaintiffs allege that these policies, practices and customs violate state and federal laws. Plaintiffs therefore seek declaratory and injunctive relief and ask this Court to enter an order (a) declaring that Defendants are in violation of the McKinney-Vento Act (42 U.S.C. §§ 11431-11435), New York State Education Law § 3209, other applicable laws, and the regulations promulgated thereunder, and (b) requiring Defendants to comply promptly with all such laws and regulations and to do so on an ongoing basis.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3), on the ground that this action arises under the laws of the United States. This Court also has jurisdiction pursuant to

the Individual with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1487 and the Rehabilitation Act, 29 U.S.C. § 794.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), on the ground that the violations of law described herein occurred in Suffolk County, New York, where the Plaintiffs reside.

9. Plaintiffs have been deprived of their federal statutory rights, and thus bring this action pursuant to 42 U.S.C. § 1983.

10. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' claims of violations of New York State Education Law and the New York Constitution, Article XI, § 1.

11. There is an actual controversy between the Plaintiffs and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 and Fed. R. Civ. P. Rule 57.

PARTIES

M.K. and S.P.

12. M.K. is the mother and legal guardian of S.P., a fifteen year old girl who, prior to becoming homeless, attended Longwood High School. M.K. and S.P. are both citizens of the United States and at all times mentioned herein were and are living in Suffolk County.

13. At all relevant times, M.K. and S.P. have been homeless and have lacked a fixed, adequate and regular nighttime residence. M.K. and S.P. have no permanent address and often spend each night of the week in a different location, or move from place to place seeking temporary shelter. M.K. and S.P. have been homeless since approximately December 5, 2003, when they were evicted from their permanent residence in Ridge, New York, within the

Longwood School District. Following the eviction, M.K. and S.P. have lived in temporary housing and are presently dwelling on a temporary basis in a motel in Holbrook, New York.

14. At all times mentioned herein, Plaintiff S.P. was enrolled in, or sought to be enrolled, in the Longwood School District.

15. On or about December 3, 2003, when M.K. and S.P. realized that they were about to become homeless, M.K. called the attendance office at Longwood High School to arrange for transportation for S.P. to and from their new temporary address. The school officials refused to help and informed M.K. that transportation was her problem, not that of the school or school district.

16. At the time M.K. and S.P. became homeless, S.P. was enrolled as a tenth grader in Longwood High School. Because S.P. was diagnosed as having special needs, S.P. was placed in a special education program.

17. M.K. does not own a car and is not able to drive. Thus, following their eviction, M.K. was not able to transport S.P. to school. M.K. made numerous telephone calls to various school officials over the next several weeks to arrange for transportation for S.P. M.K.'s calls to the school officials over the next several weeks went unanswered and the school district refused to provide any assistance to M.K. or S.P.

18. In later December, M.K. contacted New York State Technical and Educational Assistance Center for Homeless Students ("NYS TEACHS"). She was told, for the first time, that transportation for S.P. was the responsibility of the school system. NYS TEACHS directed M.K. to the "homeless liaison" at the Longwood School District.

19. M.K. called the homeless liaison on several occasions but received no return call. Finally, M.K. spoke to a secretary for the homeless liaison who informed M.K. that only the

Department of Social Services could help. M.K. explained that DSS did not place M.K. and S.P. in their temporary housing and thus would not provide transportation for them. The secretary indicated that the homeless liaison would contact them soon. The homeless liaison never called them, even though M.K. called her office several times thereafter.

20. M.K.'s repeated inquiries about transportation were never answered. The only time the school district contacted M.K. was to threaten "consequences" if S.P. did not resume her attendance at school. M.K. understood this threat to mean that they would attempt to remove S.P. from M.K.'s custody if M.K. was unable, on her own, to secure transportation for S.P. to school.

21. As a result of these events, S.P. has been out of school continuously since approximately November 26, 2003 and has received no educational or special education services of any kind since that time.

22. M.K. brings this action on her own behalf, as next friend and legal guardian of S.P., and on behalf of a class of homeless parents and children located in Suffolk County, New York.

R.I. and A.B.

23. R.I. is the mother and legal guardian of A.B., a sixteen year old girl who is presently enrolled in Eastern Suffolk Board of Cooperative Education Services ("BOCES"). R.I. and A.B. are citizens of the United States and at all times mentioned herein were and are living in Suffolk County.

24. At all relevant times, R.I. and A.B. have been homeless and have lacked a fixed, adequate and regular nighttime residence. R.I. and A.B. have no permanent address and often spend each night of the week in a different location, or move from place to place seeking

temporary shelter. R.I. and A.B. became homeless in August 2002 after fleeing from a domestic violence situation.

25. Immediately after becoming homeless, R.I. and A.B. enrolled A.B. in the Middle Country School District. R.I. and A.B. were re-housed by Suffolk County Department of Social Services ("SCDSS") every night for a considerable period of time. They were finally placed in a stable motel placement, the Rainbow Motel in Copiague, New York, only after an administrative Fair Hearing was requested. R.I. and A.B. lived in the Rainbow Motel in Copiague from approximately October 2002 until March 2003.

26. Eventually, the Middle Country School District learned that A.B. was living in a motel in the Copiague Union Free School District and advised R.I. and A.B. that A.B. could not attend school in Middle Country, but would have to attend school in the Copiague district.

27. The Copiague School District, however, refused to enroll A.B. without receiving records from her prior schools. No one at the school district or the SCDSS ever informed R.I. or A.B. that they had the right to have A.B. enrolled at and attending school regardless of whether R.I. and A.B. were able to provide certain paperwork, such as immunization records, guardian papers, utility bills, and the like.

28. When A.B. was finally enrolled in the Copiague School District, she was referred to their Committee on Special Education ("CSE") and found to have a disability. There was a waiting list, however, for the recommended BOCES placement, and A.B. was placed on home tutoring at the Copiague Public Library. The tutoring was not provided on a consistent basis. The tutor frequently did not show up, and when she did show up, would spend at most ninety minutes with A.B. rather than a full school day.

29. In March 2003, A.B. was scheduled to be screened at a 30-day program at

Sagamore Children's Center ("Sagamore") for acceptance into the BOCES placement. At this point, however, the emergency housing placement for R.I. and A.B. was moved to a shelter in Center Moriches, New York, and outside of the Copiague School District. When the Copiague School District was informed of the new address, the district informed R.I. that because they no longer resided in the Copiague School District, they would not provide busing for A.B. to attend her March 2003 appointments at Sagamore. In addition, representatives of the shelter in which R.I. and A.B. were housed called SCDSS to request that they send transportation to take A.B. to her appointment at Sagamore. The SCDSS had consistently refused to provide busing for A.B. to attend Sagamore, and again refused on this occasion. Because R.I. did not have the money to transport A.B. to her appointments at Sagamore, A.B. was not able to attend.

30. In the subsequent weeks and months, SCDSS moved R.I.'s and A.B.'s temporary housing several times, as a result of which the school district frequently stopped supplying any tutoring services and transportation to A.B. Moreover, A.B. has missed approximately six months of school in the aggregate waiting for transportation arrangements to catch up to her various new temporary housing placements. Nonetheless, A.B. has received no compensatory services or special education to address the period of time she was denied such services.

31. R.I. and A.B. have recently been informed that they may not be allowed to remain in their current housing past April or May 2004. In such event, they will probably be placed back into emergency housing shelters, motels, etc., and thus they fear that further disruption to A.B.'s schooling and special education services, as outlined above, is imminent.

32. R.I. brings this action on her own behalf, as next friend and legal guardian of A.B., and on behalf of a class of homeless parents and children located in Suffolk County, New York.

The W. Family

33. M.W. is the mother and legal guardian of 5 children, Da.W. aged 11, Di.W. aged 10, Dq.W. aged 9, T.H. aged 6 and S.J. aged 4. All of the members of the W. family are citizens of the United States and at all times mentioned herein were and are living in Suffolk County.

34. At all relevant times, the W. family has been homeless and has lacked a fixed, adequate and regular nighttime residence. The W. family has no permanent address and often spends each night of the week in a different location, or moves from place to place seeking temporary shelter. The W. family became homeless in March of 2003.

35. Prior to the time that the W. family became homeless, Da.W., Di.W., Da.W. and T.H. attended public school in the Wyandanch School District. These children are currently enrolled in public school in the South Huntington School District and have attended the schools of Suffolk County all of their lives.

36. After becoming homeless in March 2003, SCDSS placed the W. family in a series of emergency hotel placements for approximately one month at a time. Because the school-aged children of M.W. were required by SCDSS to be physically present with M.W. while the W. family awaited an emergency housing placement at SCDSS offices every day during this period, the children of the W. family were denied educational services, even though they were still enrolled in the Wyandanch School District. This requirement, which on information and belief is a normal practice of SCDSS, forces school aged homeless children to miss school.

37. M.W.'s children have also been denied transportation to and from school, including the South Huntington schools. For example, M.W. has been trying to enroll her daughter S.J. in the Head Start program. However, she was repeatedly told by representatives of both the South Huntington school district and SCDSS that S.J. cannot attend Head Start because

bus transportation has not been and will not be provided.

38. Since becoming homeless, the W. family has on several occasions been unable to procure transportation to school for the children of the W. family. The W. family were placed in emergency shelter housing by SCDSS in April 2003. After this move, no transportation was sent for her children for five days. In late April or early May 2003, M.W. and her children were moved to a different shelter, located in Southampton, New York. Transportation to school was not provided for 7-8 days. In the beginning to middle of May 2003, the W. family was moved to yet another shelter and again lost transportation to and from school for approximately 1½ weeks.

39. In July 2003, M.W. and her children were eventually moved to emergency housing in Huntington, New York. At that time, M.W. elected to place her children in school in the South Huntington School District. Dq.W. missed the first week of school because the schools insisted on enrollment paperwork. No one at the South Huntington School District or the SCDSS informed M.W. that she had the right to have Dq.W. registered at school regardless of whether she was able to provide certain paperwork relating to, among other things, immunizations, physicals, guardianship and utility bills.

40. Subsequently, the pattern of relocation and missed transportation continued. On January 15, 2004, M.W. and her children were moved to temporary housing in Smithtown, New York. After this move, the school bus did not begin picking up M.W.'s children for approximately 1 week. On February 4, 2004, M.W. and her children were moved again, this time to Bay Shore, New York. M.W. and her children currently reside at this location. Once again, the W. family experienced a delay in bus transportation, which has not yet been provided to any of the W. children. As of the date of this complaint, the W. children have each missed more than one week of school. M.W.'s children are currently out of school on mid-winter

vacation and M.W. has been informed that bus transportation will be provided on February 23, 2004, after the mid-winter break ends.

41. M.W. brings this action on her own behalf, as next friend of Da.W., Di.W., Dq.W., T.H. and S.J. and on behalf of a class of homeless parents and children located in Suffolk County, New York.

The K. Family

42. T.K. is the father and legal guardian of K.K., aged 10. All of the members of the K. family are citizens of the United States and at all times mentioned herein were and are living in Suffolk County.

43. At all relevant times, the K. family has been homeless and has lacked a fixed, adequate and regular nighttime residence. The K. family has no permanent address and often spends each night of the week in a different location, or moves from place to place seeking temporary shelter.

44. K.K. is presently in the 5th grade in the Longwood Central School District.

45. While living in temporary housing in both Smithtown and Medford, officials from the Longwood school district informed T.K. that they would not provide transportation to school for K.K. on days of delayed openings, such as during inclement weather. The school district also refused to provide transportation for K.K. after soccer and band programs offered by the Longwood Central School District at K.K.'s school and, as a result, K.K. was not able to participate in those programs.

46. When T.K. inquired about this, he was informed by school officials that the district was not sending transportation because it did not want to pay for it.

47. As a result of Longwood's position, K.K. has missed approximately 15 to 18 days

of school since September, 2003, and has not been able to participate in afterschool programs made available to other children.

48. T.K. brings this action on his own behalf, as next friend of K.K. and on behalf of a class of homeless parents and children located in Suffolk County, New York.

The State Defendants

49. Defendant New York State Education Department ("NYSED") is a governmental agency of Defendant State of New York with control over educational matters affecting Suffolk County and responsible for the general supervision and management of the Suffolk County Public Schools. As such, it is responsible for ensuring compliance with federal, state and local laws governing this system.

50. NYSED is a recipient of federal funds under the McKinney-Vento Act. Upon information and belief, for the fiscal year 2001, NYSED received McKinney-Vento Funds in the amount of \$3,420,665.00. Upon information and belief, NYSED received in excess of \$5 million of McKinney-Vento funds in each of 2002 and 2003.

51. By accepting those funds, the NYSED is required under the McKinney-Vento Act to ensure, among other things, that

- a. each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education as provided to other children and youth;
- b. New York State take steps to revise and remove residency requirements and other laws, regulations, practices, or policies that may act as barrier to the enrollment, attendance, or success in school of homeless children;
- c. homelessness alone should not be sufficient reason to separate students from the mainstream school environment;
- d. the defendant NYSED is to ensure that homeless children and youth should have access to the education and other services that such children and youth need to

ensure that such children and youth have an opportunity to meet the same challenging state student performance standards to which all students are held;

- e. the local educational agencies (i.e., the local school districts) comply with the McKinney-Vento Act;
- f. homeless children and youth are identified and their special needs are assessed (See 42 U.S.C. § 11432(g)(1)(B));
- g. procedures are available for prompt resolution of disputes (See 42 U.S.C. § 11432(g)(1)(c));
- h. homeless children have access to public preschool programs (See 42 U.S.C. § 11432(g)(1)(F)(i));
- i. NYSED and local educational agencies develop, review and revise policies to removed barriers to school enrollment and retention for homeless children and youth (42 U.S.C. § 11432(g)(1)(I)); and
- f. the State and its local educational agencies adopt policies and practices to ensure that transportation is provided to and from the school of origin (See 42 U.S.C. § 11432(g)(1)(J)(iii)).

52. NYSED was at all relevant times acting or purporting to act under color of state law.

53. NYSED is also a recipient of federal funds under IDEA and is mandated by IDEA to ensure the delivery of appropriate special educational services to all children with disabilities up to the age of twenty-one who reside in New York State, including the disbursement of IDEA funds to Local Educational Agencies or LEAs.

54. Defendant Richard P. Mills is the Commissioner of Education of the State of New York. Having been appointed by the Board of Regents of the University of the State of New York, he is the chief administrative officer of the Defendant NYSED and, in that capacity, is responsible for the general management and supervision of the state public education system, including education of homeless children. He is also responsible for securing the lawful exercise of all authority delegated to NYSED and insuring compliance by the LEAs with the requirements

of the McKinney-Vento Act, the IDEA, New York State Education Law section 3209, and New York State Education Law, Article 89, and the implementing regulations.

55. Commissioner Mills was at all relevant times acting or purporting to act under color of state law under New York Education Law Article 7, §§ 301-316.

56. Defendant Sheila Evans-Tranumn is an Associate Commissioner of Education of the State of New York. Upon information and belief, Ms. Evans-Tranumn has been appointed New York's "Coordinator of Education of Homeless Children" as specified under 42 U.S.C. § 11432(f) and thus is the person in the Department of Education with direct responsibility for coordinating NYSED's activities vis-à-vis homeless children and overseeing the use of the money granted to New York State under the McKinney-Vento Act. Upon information and belief, Ms. Evans-Tranumn is responsible for establishing a system to monitor compliance by the school districts of New York State with the requirements of the McKinney-Vento Act and ensuring such compliance.

57. Associate Commissioner Evans-Tranumn was at all relevant times acting or purporting to act under color of state law under New York Education Law Article 7, §§ 301-316.

58. Defendant Patricia McGuirk has been appointed the Program Manager for the Homeless of the New York State Education Department by Defendant Sheila Evans-Tranumn. Upon information and belief, Ms. McGuirk shares with Ms. Evans-Tranumn the responsibility for establishing a system to monitor compliance by the school districts of New York State with the requirements of the McKinney-Vento Act and ensuring such compliance.

59. Defendant McGuirk was at all relevant times acting or purporting to act under color of state law under New York Education Law Article 7, §§ 301-316.

60. Defendants State of New York, The New York State Education Department,

Richard P. Mills (as Commissioner of Education of The New York State Education Department), Sheila Evans-Tranum (as Associate Commissioner of Education of The New York State Education Department) and Patricia McGuirk (as Program Manager for the Homeless of the New York State Education Department) will be referred to collectively herein as the "State Defendants."

The Social Services Defendants

61. Defendant New York State Office of Temporary and Disability Assistance ("OTADA") is a governmental agency of Defendant State of New York with control over social services affecting New York State and is responsible for the general supervision and management of the administration of social services in Suffolk County. As such, it is responsible for ensuring compliance with federal, state and local laws governing this system.

62. Defendant Robert Doar is the Acting Commissioner of the New York State Office of Temporary and Disability Assistance. Having been so, he is the chief administrative officer of the Defendant OTADA and, in that capacity, is responsible for the general management and supervision of the state social services system, including services provided to homeless children. Acting Commissioner Doar was at all relevant times acting or purporting to act under color of state law.

63. The Suffolk County Department of Social Services ("SCDSS") is the local Department of Social Services in Suffolk County, New York and is responsible for the general supervision and management of social services provided to homeless people in Suffolk County, New York. As such, SCDSS, like OTADA, is responsible for ensuring compliance with federal, state and local laws governing this system.

64. OTADA and SCDSS are mandated by state law (New York State Education Law

§ 3209 and its regulations) to, among other things, assist homeless families in completing the required forms for enrollment in a designated school district and to provide for transportation to and from the designated school district of each homeless child who is eligible for benefits pursuant to section 350-j of the Social Services Law. All allegations herein against OTADA and SCDSS relate to conduct affecting homeless children who are eligible for OTADA and SCDSS benefits in Suffolk County, New York.

65. OTADA and SCDSS were at all relevant times acting or purporting to act under color of state law.

66. Defendants Janet DeMarzo and Dan Hickey are, respectively, the Commissioner and Associate Commissioner of the Suffolk County Department of Social Services. Having been duly appointed by Suffolk County, they are the chief administrative officers of the SCDSS, and, in that capacity are responsible for the general management and supervision of the SCDSS in Suffolk County. They are also responsible for securing the lawful exercise of all authority delegated to SCDSS and to ensure compliance with the laws governing SCDSS including but not limited to New York State Education Law § 3209 and its implementing regulations.

67. Commissioner DeMarzo and Associate Commissioner Hickey were at all relevant times acting or purporting to act under color of state law.

68. Defendants New York State Office of Temporary and Disability Assistance, Suffolk County Department of Social Services, Robert Doar, Janet DeMarzo and Dan Hickey will be referred to collectively herein as the "Social Services Defendants."

The School District Defendants

69. Upon information and belief Defendant Longwood Central School District is a municipal corporation duly organized and existing under New York State Education Law and is

a Local Educational Agency ("LEA") under the IDEA and the McKinney-Vento Act.

70. Upon information and belief Hampton Bays School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

71. Upon information and belief Defendant Middle Country School District is a municipal corporation duly organized and existing under New York State Law and is an LE

72. Upon information and belief Copiague Union Free School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

73. Upon information and belief South Huntington School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

74. Upon information and belief Medford School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

75. Upon information and belief Central Islip School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

76. Upon information and belief William Floyd School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

77. Upon information and belief Bay Shore Union Free School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

78. Upon information and belief South Country School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

79. Upon information and belief Brentwood School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

80. Upon information and belief North Babylon School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

81. Upon information and belief Amityville School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

82. Upon information and belief Riverhead School District is a municipal corporation duly organized and existing under New York State Law and is an LEA.

83. Upon information and belief, other school districts in Suffolk County should be defendants in this action but the Plaintiffs, in the exercise of due diligence, have not been able to determine the names and addresses of all school districts involved. Plaintiffs therefore also name John Doe School Districts 1 through 10, inclusive, who are believed to be municipal corporations duly organized and existing under New York State Law and LEAs for purposes of the McKinney-Vento Act.

84. Defendants Longwood Central School District, Hampton Bays School District, Middle Country School District, Copiague Union Free School District, South Huntington School District, Medford School District, William Floyd School District, Central Islip School District, Bay Shore Union Free School District, South Country School District, Brentwood School District, North Babylon School District, Amityville School District, Riverhead School District, and John Doe School Districts 1-10 will be referred to collectively herein as the "School District Defendants."

85. The School District Defendants are municipal entities that are regulated by and report to the educational authorities of the State of New York, including the State Defendants.

86. The School District Defendants establish local rules and practices concerning the enrollment, transportation and education of children within their districts, including homeless children.

87. The School District Defendants are recipients of funds from the State Defendants

for the education of children. Included in these funds are funds designated for the enrollment, education and transportation of homeless children, under the McKinney-Vento Act and New York State Education Law § 3209.

Class Action Allegations

88. The named Plaintiffs bring this action on behalf of two Plaintiff classes (“Class A,” the “children class;” and “Class B,” the “parent class”), pursuant to Fed. R. Civ. P. 23. The classes are defined as follows:

- a. Class A: All school aged children (as defined by New York State Education Law) who, on or after September 1, 2001: (1) have lived, are living or will live in Suffolk County, New York; and (2) during such period have been, are, or will be “homeless” as defined in the McKinney-Vento Act, 42 U.S.C. § 11434A.
- b. Class B: All parents, guardians or persons in a parental relationship for children in Class A, who, on or after September 1, 2001: (1) have lived, are living or will live in Suffolk County, New York; and (2) during such period have been, are or will be “homeless” as defined in the McKinney-Vento Act, 42 U.S.C. § 11434A.

89. According to estimates by the Suffolk County Joint Task Force on Homelessness, class members currently number in the hundreds. It is estimated, for example, that some 2,300 residents of Suffolk County are homeless and live in emergency housing, of which 1,400 are children.

90. On information and belief, many of these children, if they are permitted by the Defendants to continue to attend school at all, are forced to transfer multiple times to different placements in different school districts during the course of a school year, causing them to miss numerous days of school. Such frequent changes occur because of the inherently transient nature of homelessness and because the Defendants have failed to comply with certain requirements of the McKinney-Vento Act. Defendants have not taken steps to ensure that these children remain in their schools of origin if at all possible, despite their homelessness, nor do they assist homeless

families in a way that ensures that the children receive consistent, uninterrupted transportation to enable them to attend the schools designated for them by their parents. Because many class members lack any fixed and regular residence and are forced to move from place to place and because the class is so numerous, joinder is impracticable.

91. There are questions of law and fact common to the class, which common questions predominate over any questions affecting only individual class members. The Defendants have engaged in a persistent and repeated pattern of refusing to remove barriers to education of homeless children, despite their statutory and regulatory obligations to do so, and as a result have in essence denied homeless children a free and appropriate public school education. The Defendants have acted or refused to act on grounds that are generally applicable to the classes, thereby making appropriate injunctive relief and declaratory relief with respect to the classes as a whole.

92. The claims of the named Plaintiffs are typical of the claims of the two classes. Homeless children in Suffolk face comparable, if not identical, barriers to entering and remaining in public school in Suffolk County, New York. Without access to an adequate and continuous public education, all of these children face serious setbacks in their developmental path to becoming productive, self-sufficient adults.

93. The named Plaintiffs will fairly and adequately protect the interests of the class. They are ready and able to pursue this case in the interests of the classes and have no interests adverse to those of the class members they represent. They have retained counsel with sufficient expertise in class action and civil rights litigation to prosecute the case.

94. Certifying a class here is an appropriate method for the fair and efficient adjudication of the controversy. Absent class certification, it is unlikely that the unlawful

behavior by the Defendants described herein could be remedied, particularly given the numerous obstacles to bringing and maintaining a lawsuit faced by homeless families. Indeed, absent class certification, it is almost certain that homeless children's voices will not be heard, and the systemic failure to educate homeless children in Suffolk County will continue unabated.

FACTUAL ALLEGATIONS

The Plight of Homeless Children in Suffolk County, New York

95. Upon information and belief, there are currently some 550-600 homeless families in Suffolk County, comprising approximately 2,300 people.

96. Upon information and belief, the homeless population of Suffolk County has doubled in the last three years and continues to climb. The precise number of homeless families and children is difficult to calculate due to the mobility and lack of permanent residence of the homeless and the societal stigma associated with homelessness.

97. Of the approximately 2,300 homeless people living in Suffolk County New York, it is estimated that approximately 1,400—more than 60%—are children.

98. As of the end of 2002, approximately 550 homeless families were living in emergency housing provided by the Social Services Defendants. Due to the lack of shelter space, however, the Social Services Defendants have placed over 176 families in motels.

99. SCDSS requires that all members of a homeless family, including employed adults who are missing work and school-age children who are missing school, appear at one of five local county centers to be screened, have their eligibility determined and, sometimes, be placed in emergency housing. Depending on the size of the family, the difficulty in finding a vacant placement, and the number of families already being served by the county's emergency

housing system, the SCDSS housing unit ("Central Housing") is often unable to find placements for a particular evening.

100. A family which has not been placed by Central Housing by the end of the day, even if they have been sitting in a local center all day, must contact the Emergency Services (ES) unit of SCDSS by calling the emergency after-hours number themselves, later that night, after the center is closed. Placements made by ES are drawn from a pool (mostly of hotels and motels) separate and apart from the more stable placements handled by Central Housing.

101. A family placed by ES is required to return to the local center the next day (or the next business day) with all members of the family (including school-aged children) and all of their belongings, to await placement again for that evening. During the present ongoing crisis of homelessness in the county, the family may be required to wait all day in the local center and then again be told that there are no stable placements available and so the family must call ES again. They may be placed that night in a different hotel or motel, or in the same motel, even in the same room as the night before. The next day they are required to again return to the local center, with all members of the family and all of their belongings, to repeat the same process until they receive a more stable placement.

102. Even when a homeless family is finally placed in a more stable emergency housing, it takes five days, sometimes longer, to set up bus transportation to get school-age children back to school. Because of the ongoing crisis in the county homeless families in Suffolk are virtually never placed within their school district of origin. If at any time the family is transferred to a different emergency housing placement, it again takes five days, sometimes longer, to re-establish school transportation.

103. In fact, when SCDSS deauthorizes or discontinues a family from one emergency

housing placement in order to transfer them to another, it also discontinues the supportive service of school bus transportation. No attempt is made to ensure that the already established bus transportation continues uninterrupted despite the transfer of the homeless family from one shelter to another.

104. Upon information and belief, SCDSS has no system in place to provide school transportation for the school-age children of families placed in non-stable emergency housing by ES.

Obstacles Facing Homeless Children in the Public Schools

105. Homeless children face unique obstacles to enrolling in and remaining in public school. Public schools traditionally required proof of a "permanent address" as a prerequisite to enrollment. Homeless families, by their very nature, lack such a permanent address and thus were often turned away at the schoolhouse door.

106. In addition, public school districts including the School District Defendants typically demanded a host of records and documentation that cannot reasonably be demanded of homeless children and their families. Homeless children for example, are hard pressed to document their residency or retain immunization records. Nonetheless, without such documentation, school districts routinely turned away homeless children and refused to enroll them.

107. The parents of homeless children often face a further obstacle in ensuring that their children receive the education they are entitled to -- namely, the absence of transportation to enable their children to attend school. Because school districts found it administratively difficult to cope with the ever-changing addresses of homeless families, they often declined to transport them at all. Homeless children thus often found themselves with no reliable means to get to and

from school.

108. Changes in the school environment can impede the opportunities for homeless children to achieve success in education. Research indicates that students who change schools due to unplanned residential mobility, such as that associated with homelessness, score lower on standardized tests and have lower overall academic achievement. They are more likely to drop out of school and experience emotional and behavioral difficulties. Their educational needs are often unrecognized and unmet.

109. Various other obstacles have historically stood in the way of homeless children obtaining a public school education. Aside from the stigma and isolation imposed by homelessness, homeless children have often found that the requirements imposed by social service agencies were at odds with the requirements of school districts. Homeless families were required to make difficult choices not faced by other families, such as whether to apply for temporary housing or whether to send their children to school.

Education of the Homeless Under Federal and State Law

The McKinney-Vento Act

110. Congress acted decisively to remove the obstacles faced by homeless children in enacting the McKinney-Vento Act, Pub. L. No. 100-77, § 102(b)(2), 100 Stat. 482, 485 (codified as amended at 42 U.S.C. § 11301 *et seq.*) in 1987 to provide a broad range of assistance to homeless individuals and families. Subtitle VII-B of the McKinney-Vento Act relates to the education of homeless children and youth. 42 U.S.C. §§ 11431-11435.

111. In enacting the McKinney-Vento Act, Congress sought to ensure that homeless children would have “equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth.”

112. Thus, Congress made available funds for the States to assist in the education of homeless children on the condition that the States receiving such funds remove the “compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth” and that the States “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youth are afforded the same free, appropriate public education as provided to other children and youth.”

113. Under 42 U.S.C. § 11434A, the McKinney-Vento Act defines “homeless children and youths” to include:

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are waiting foster care placement;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C);
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

114. To carry out the purposes of the McKinney-Vento Act as it relates to educational opportunities for homeless children, the U.S. Secretary of Education makes grants directly to “state educational agencies.” 42 U.S.C. § 11432. Under the McKinney-Vento Act, NYSED is a “state educational agency.”

115. New York, like every other state, receives federal funds to carry out the purposes

of the McKinney-Vento Act. Upon information and belief, for the fiscal year 2001, NYSED received McKinney-Vento Funds in the amount of \$3,420,665.00. Upon information and belief, for the fiscal year 2002, NYSED received \$5,041,904.00 in McKinney-Vento Funds and in 2003 it received \$5,568,814.00 in such funds—a more than 10% increase over 2002.

116. The McKinney-Vento Act, at 42 U.S.C. § 11432(g), requires the State to provide for the education of homeless children and youth within the State, and the plan adopted by the State must show how the state will ensure that local educational agencies in the State will comply with the requirements of the McKinney-Vento Act.

117. Under the McKinney-Vento Act, the local educational agencies are required to develop, review and revise policies to remove barriers to the enrollment and retention of homeless children and youth in their schools. 42 U.S.C. § 11432(g)(1)(I); 42 U.S.C. § 11432(g)(7).

118. Under the McKinney-Vento Act, each local educational agency must designate a liaison, who must ensure that: homeless children and youths are identified; homeless children and youths enroll in, and have a full and equal opportunity to succeed in school; homeless families, children and youths receive educational services for which they are eligible, including Head Start, Even Start and public preschool programs; parents or guardians of homeless children are informed of the educational and related opportunities available to their children and provided with meaningful opportunities to participate in their children's education; public notice of educational rights is disseminated where children and youth receive services, such as schools, family shelters, and soup kitchens; and parents, guardians and youth are fully informed of transportation services and assisted in accessing those services. 42 U.S.C. § 11432(g)(6)(A).

119. The McKinney-Vento Act further provides that "The Coordinator for Education

of Homeless Children and Youths established in each State shall . . . (2) develop and carry out the state plan . . . (4) facilitate coordination between the State educational agency, the State social services agency, and other agencies . . . (6) provide technical assistance to local educational agencies . . . to ensure that local educational agencies comply with the requirements of section 722(e)(3) and paragraphs (3) through (7) of subsection (g).” 42 U.S.C. § 11432(f).

120. A local educational agency that applies to the state educational agency for a grant of McKinney-Vento Act funds is required to give “an assurance that the applicant complies with, or will use requested funds to come into compliance with, paragraphs (3) through (9) of § 11432(g).” 42 U.S.C. § 11433(b)(3).

The Individuals with Disabilities Education Act (“IDEA”)

121. The IDEA, 20 U.S.C. §§ 1400-1487, and the regulations promulgated thereunder, provide children with disabilities a substantive right to a “free appropriate public education” in the “least restrictive environment” in those states that receive federal assistance provided under IDEA. 20 U.S.C. § 1412(a); 34 C.R.R. §§ 300.550-300.556.

122. The State Education Department and, through NYSED, the boards of education (LEAs or School Districts such as Bay Shore and Longwood) receive funds appropriated under IDEA and, therefore are subject to its requirements. See 20 U.S.C. §§ 1412(a), 1413(a). Upon information and belief, the School District Defendants have received funds from NYSED out of the money the State Defendants received from the federal government under the McKinney-Vento Act.

123. In order to receive federal assistance under IDEA, each State must develop a plan that assures a free appropriate public education to all children with disabilities, aged three through twenty-one. 20 U.S.C. § 1412 (a)(1)(A).

New York State Education Law

124. New York State Education Law § 3202 (1) provides that every person over five and under twenty one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition.

125. New York State Education Law § 3209 commits the Defendants to provide for the education of homeless children in New York State.

126. Pursuant to statutory authority, the Defendant Commissioner of Education enacted regulations which provide for the education of homeless children in New York State. 8 NYCRR § 100.2 (x).

127. New York State law and regulations, among other things, require that a school district must make available a “designation” form (called “STAC” forms) to any homeless child or parent or guardian in order for the child to enroll in the school district of current location or continue in the school district of origin. It is up to the parent or guardian to determine whether the homeless child shall attend the school district of current location or the school district of origin. These sections also require that homeless children be provided with transportation to either the district of origin or the district of current location.

128. Recent amendments to the New York State law from the Summer of 2003 also require the LEAs to comply with 42 U.S.C. §§ 11432(g)(3) through (7).

129. The Defendant Commissioner of Education is required to periodically monitor local school districts to ensure their compliance with the provisions of New York State Education Law § 3209 and the regulations promulgated thereunder.

The Defendants' Duties Under Federal and State Law

130. Under the aforementioned laws, the State Defendants are obligated, among other things, to:

- a. prepare and carry out an adequate state plan for implementing the McKinney-Vento Act and ensure the LEA's compliance with the plan;
- b. require the LEA's to ensure that all homeless school age children in Suffolk County and New York State have access to a free appropriate public education;
- c. coordinate with local social service and housing agencies and programs providing services to homeless children and youth including shelters, the Department of Social Services, residential programs for runaway and homeless youth (established pursuant to article nineteen-H of the executive law of New York State);
- d. ensure that the local social service agency complies with the provisions of New York State Education law and its regulations in providing education and transportation services to homeless children and youth;
- e. review and revise policies that may act as barriers to, and provide services that enable the enrollment, attendance and success in school of each homeless child in Suffolk County and New York State, including policies related to transportation, records-requirements and residency requirements;
- f. provide procedures for the prompt resolution of placement and transportation assistance disputes affecting homeless children in Suffolk County and New York State;
- g. identify and address problems affecting the education of homeless children in the Suffolk County and New York State;
- h. assure that policies and practices are adopted by the state and LEAs to ensure that homeless children in the Suffolk County and New York State are not stigmatized or isolated;
- i. ensure that the LEAs provide written notice to homeless school-age children and the parents or legal guardians of such children of any adverse action affecting their placement in schools, a fair opportunity to challenge such decisions, including the notice of the availability of an ombudsperson and a process of resolving the dispute;
- j. ensure the LEAs compliance with state law and regulations (New York Education Law section 3209 and 8 NYCRR 100.2 (x));

- k. ensure that the LEAs locate and provide educational services to all eligible children in the County of Suffolk and New York State;
 - l. ensure that the state, the state educational agency and the LEAs carry out the mandates of the IDEA, 20 U.S.C. § 1412, and its regulations and that the LEAs comply with Article 89 of New York State Education Law and its regulations to provide a free appropriate public education to students classified as having a disability pursuant to these statutes and regulations;
 - m. ensure that homeless children and youth are able to participate in Federal, State or local food programs;
 - n. ensure that homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children;
 - o. ensure that homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services;
 - p. identify homeless children and youth and assess their special needs.
131. Under the same laws discussed above, the School District Defendants are obligated to:
- a. make available to each homeless child and family the designation form provided by the commissioner ("STAC" form) who seeks to enroll (or continue the child) in school;
 - b. review the designation form to assure that it has been completed;
 - c. where the school district of origin is designated, the child shall be entitled to return to the school building where previously enrolled;
 - d. where the school district is the school district of current location the child shall be admitted to the school, the homeless child shall be treated as a resident for all purposes, the LEA must make a written request to the school district where the child's records are located for a copy of such records; and forward the designation form to the commissioner and the school district of origin if applicable;
 - e. where a homeless child is not entitled to receive transportation pursuant to Education Law section 3209(4) from the Department of Social Services or from the Division for Youth, the child shall be transported by the designated school district;
 - f. establish policies and procedures to ensure compliance with the provisions of

New York State Education Law section 3209 and its regulations and review and revise any local regulations, policies or practices that may act as barriers to the enrollment or attendance of homeless children in school or their receipt of comparable services as defined in Part B of Title VII of the Federal Stewart B. McKinney-Vento Act;

- g. ensure that homeless families, children and youths receive educational services for which they are eligible, including Head Start, Even Start and public preschool programs;
- h. periodically report such information to the commissioner as he or she may require to carry out the purposes of New York State Education Law section 3209.
- i. provide a free appropriate public education in the least restrictive environment to students who are classified as having a disability pursuant to the IDEA and Article 89 of New York State Education Law.

132. At all relevant times, the Social Services Defendants have had the duty to comply with all applicable provisions bearing upon the education of the named Plaintiffs and Class members, including the obligations to:

- a. ensure that each homeless child who is eligible for benefits pursuant to section 350-j of the Social Services Law, receives transportation to and from the temporary housing location in which the child was placed;
- b. make available to each homeless child located in a temporary housing facility operated or approved by SCDSS, a person designated by the social services agency who shall within two business days, assist the child's guardian or other designator (as defined in New York State Education Law § 3209) in completing the designation forms in order that the homeless child may be enrolled in the designated school district.
- c. ensure that each homeless child and his or her family not be subject to any policy, procedure, rule or requirement that in any way interferes with the ability of the homeless child to be in attendance at school.

Defendants' Violations of Their Statutory and Other Duties

133. In contrast to these duties, the Defendants have repeatedly and persistently failed to meet their obligations under the relevant laws. Among other things, and as detailed more fully herein, the Defendants have failed to revise their policies and practices regarding transportation

which act as a barrier to the enrollment attendance and success of homeless youths and have failed to ensure that LEAs revise their policies and practices regarding transportation of homeless children. For example, homeless children seeking transportation to or from the school of their choice are often denied transportation simply because they lack a permanent address. As a result, members of the Class seeking to enroll in public school have been denied that opportunity for lack of transportation to the school of their designation.

134. Suffolk County Department of Social Services, for example, pursues a policy granting them a five-day window in which to provide transportation for a homeless child making such a request, but only after the family has been placed in a “stable” emergency housing placement. The practical effect of this self-declared requirement is that weeks or months can elapse before children are provided the transportation to school that the Suffolk County Department of Social Services is statutorily required to provide upon request. Indeed, some Plaintiffs are denied “stable” emergency housing for months or longer, and only receive such housing after they demand an administrative “fair hearing” before an Administrative Law Judge. On information and belief, this policy is known to and approved by the Social Services Defendants.

135. The Social Services Defendants have been ordered, by the Principal Administrative Law Judge of OTADA, to review the transportation situation of homeless families “to ensure that school transportation is provided to children of homeless families.” On information and belief, the Social Services Defendants have ignored this ruling of their own Principal Administrative Law Judge and have refused to address their failure to provide adequate transportation for homeless children to and from school.

136. The Defendants have also failed to meet their statutory obligations by failing to

coordinate the activities of the School District Defendants with other service providers such as the Social Services Defendants. In some instances, detailed more fully below, the policies imposed by the Social Services Defendants as a precondition to the Plaintiffs receiving temporary housing or other services are the basis of the School District Defendants refusal to provide transportation services or other educational services to homeless children. For example, the Social Services Defendants often require an entire family, children included, to be present at local social services centers all day, sometimes for weeks on end, simply to apply and be assessed for temporary housing each and every business day. The effect of this requirement is to force homeless families to choose between temporary housing and the education of their children, a choice that is plainly impermissible under federal and state law.

137. The School District Defendants have violated the law by providing incorrect or false information to homeless families seeking to enroll their child in an appropriate district. Sometimes the School District Defendants falsely informed homeless families that they could not enroll in the school district when federal and state law expressly provided that they could. In some instances, the School District Defendants have simply refused, without basis, to process the STAC forms submitted by parents of homeless children.

138. The Defendants have also failed to establish an effective and timely procedure for the resolution of disputes pertaining to the educational services provided to homeless children in Suffolk County. In some instances, homeless children and their families have no established means of addressing disputes. Where dispute resolution procedures are available, they are slow, and virtually impossible to navigate without an attorney, rendering them inappropriate for resolving the needs of homeless children. As a result, homeless children who have been denied access to the school of their choice or who have been denied other educational rights have had to

wait an inordinate period of time to have those issues resolved, if they are resolved at all.

139. The Defendants have placed other unlawful obstacles in the way of the education of homeless children. For example, on information and belief, Hampton Bays, Amityville and perhaps other school districts have required records before permitting enrollment. Some school districts refuse to provide free school meals without completed applications.

140. The Defendants have also violated the above-referenced statutes and regulations by failing to ensure that the LEAs such as the School District Defendants identify and address enrollment delays occasioned by cumbersome, unnecessary and time-consuming record requirements, enrollment and transfer requirements. Upon information and belief, homeless children are denied enrollment to public school because they lack a permanent address or because they lack other records or documentation that they do not have because they are homeless. As a result, homeless children seeking to enroll in a school in which they are entitled to enroll by statute are often denied enrollment or find that enrollment is unreasonably delayed because of record requirements that are impractical for homeless children. Such requirements constitute an impermissible barrier to enrollment under the McKinney-Vento Act and New York State Education Law § 3209.

141. Relatedly, the Defendants have not adopted appropriate policies or procedures to enforce the decisions of ombudspersons and/or the dispute resolution process for LEAs such as the School District Defendants. Upon information and belief, the School District Defendants routinely and systematically ignore the ombudsperson and/or the dispute resolution process with respect to the education and/or transportation of homeless children. On occasion, the ombudsperson has directed the LEA to provide certain services or accommodations for homeless children, but the LEA has refused. The consequence is that numerous homeless children have

been forced to forego their right to an education and/or transportation to LEAs such as the School District Defendants.

142. The State Defendants, while aware of the failure of the School District Defendants to meet the requirements of federal and state law, have refused to take appropriate corrective action.

143. The Defendants have also violated the statutes and regulations by failing to adopt policies and practices or to ensure that the LEAs adopt, policies and practices that ensure that homeless children are not isolated or stigmatized. Because homeless children are denied the opportunity to attend school or participate in afterschool or other programs, they are often at a disadvantage socially vis-à-vis other children who do not face such obstacles.

144. The Defendants have failed to carry out the mandates of the IDEA, 20 U.S.C. 1412 and its regulations and ensure that the LEAs comply with Article 89 of New York State Education Law and its regulations to provide a free appropriate public education to students classified as having a disability pursuant to these statutes and regulations. Thus, homeless children in Suffolk County with disabilities are not being provided with individualized educational plans ("IEPs") because they are being denied access to public school. The LEAs including the School District Defendants are not complying with the IEPs for those homeless children who have been provided with IEPs because of the failure to make appropriate efforts to ensure the sustained enrollment and attendance of homeless children.

145. In addition, the Defendants are violating the IDEA by failing to provide compensatory educational services to homeless children, particularly those children who have prolonged absences as a result of the Defendants' failure to meet the requirements of the McKinney-Vento Act or New York Education Law § 3209.

146. When the state defendants have been made aware of violations of law bearing upon the education of homeless children and/or homeless children who are also classified as having a disability pursuant to the IDEA and Article 89 of New York State Education Law, in Suffolk County, they have ignored these violations, have failed to take corrective action, and/or have failed to make the systemic changes necessary to comply with their statutory and regulatory duties.

147. In short, the Defendants have engaged in and are engaging in a pattern and practice of, among other things, (a) failing to provide or providing an inadequate process for selecting a school that is in the best interest of the homeless child; (b) failing to provide an opportunity for the parent of a homeless child to state the best interest of the child in school selection; (c) denying homeless children the opportunity to remain in their schools of origin and forcing them to transfer to the school which serves the attendance area in which they stay while homeless; (d) when homeless children move from one homeless shelter to another within Suffolk County, Defendants engage in a pattern and practice of denying them the opportunity to remain at the school serving the first shelter and forcing them to transfer to the school serving the second (or subsequent) shelter.

The Defendants' Awareness of Their Violations of Federal and State Law

148. The Defendants are aware that they are not in compliance with federal and state law. Among other things, Nassau Suffolk Law Services and the Long Island Advocacy Center wrote to Commissioner Mills (with a copy of the letter to former Commissioner Wing of OTADA and Commissioner DeMarzo of Suffolk County Department of Social Services) on or about August 7, 2003 to detail the ways in which state and local agencies were failing to meet the educational and transportation needs of homeless children. Only Commissioner Mills

responded, through a subordinate, and then only with a pro forma referral to the inadequate state Education Department dispute resolution process now in place.

149. The August 7, 2003 letter, of course, told Commissioner Mills nothing he did not already know. Upon information and belief, if the State Defendants performed even a cursory review of the programs and policies of the School District Defendants -- more than a cursory review is required by the McKinney-Vento Act and New York State law -- they must have been aware of the almost total failure of the School District Defendants to seriously address the various obstacles they erected preventing homeless children from enrolling in and staying in public school. Further, on information and belief, Eastern Suffolk BOCES staff have consistently brought violations to the State Defendants' attention on a regular basis over a period of years, but the State Defendants have failed to take appropriate action.

150. The Social Services Defendants are also well aware of their failure to satisfy the statutory and regulatory requirements vis-à-vis homeless children. Nonetheless, they have either refused or have failed to take appropriate steps to bring their conduct within the requirements of the law.

151. Among other things, OTADA provides homeless persons and others receiving benefits from OTADA with an opportunity to request a "fair hearing" before an administrative law judge.

152. On information and belief, OTADA's own Administrative Law Judges have found the Suffolk County Department of Social Services to be in violation of the laws mandating appropriate transportation for homeless children to public schools. For example, on January 29, 2003, Suffolk County Department of Social Services was ordered by Principal Administrative Law Judge Philip Nostramo to conduct a review of its cases and policies "to ensure that school

transportation is provided to children of homeless families.” (In the Matter of the Appeal of Althea M., FH #3803657H.)

153. Rather than comply with this Order, Suffolk County Department of Social Services requested “reconsideration” of the Order.

154. In a May 9, 2003 response to Suffolk County Department of Social Services’ request for “reconsideration,” Principal Administrative Law Judge Philip Nostramo again urged the Suffolk County Department of Social Services to work with State officials to achieve appropriate transportation arrangements for homeless children.

155. Upon information and belief, the Suffolk County Department of Social Services has not done so, and has failed to take any meaningful action in response to OTADA’s finding that SCDSS was failing to meet its statutory obligations to homeless children living in Suffolk County.

156. In addition, in an October 2002 memorandum to all District Superintendents, and School District Homeless Liaisons, Associate Commissioner Sheila Evans-Tranumn (a Defendant in this action) conceded that the various obligations of the McKinney-Vento Act, among others, were “in effect and binding,” and that

- “At the request of a parent or guardian, homeless students must be provided with transportation to and from their school of origin.”
- “Parents and guardians, and unaccompanied youth, are [to be] fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation services.”
- “A school selected must immediately enroll students in homeless situations, even if they do not have required documents, such as school records, medical records, proof of residency, or other documents. The term ‘enroll’ includes attending classes and participating fully in school activities.”
- “States and LEAs must develop, review and revise their policies to remove barriers to the enrollment and retention of children and youth in homeless situations.”
- “Local Educational Agencies (LEAs) must, to the extent feasible, keep students in homeless situations in their school of origin (defined as the school attended when permanently housed, or the school in which they were last enrolled), unless it is against the parent’s or guardian’s wishes.”
- “Liaisons must collaborate and coordinate with state coordinators and community and school personnel responsible for the provision of education and related services to children and youth in homeless situations.”
- “Every LEA must designate an appropriate staff person as a local educational agency liaison for students in homeless situations.”
- “Liaisons must ensure that . . . [c]hildren and youth enroll in, and have full and equal opportunity to succeed in, the schools of the LEA.”

Injury to the Plaintiffs

157. As set forth above, as a result of Defendant’s policies, custom, pattern and practice, Plaintiffs have suffered and continue to suffer irreparable harm.

158. Plaintiffs in Class A routinely are denied an opportunity to continue to attend the school of origin when they become homeless.

159. Plaintiffs in Class A routinely are forced to transfer to several different schools

during the course of a single academic year as they move from one shelter placement to another or to permanent housing.

160. Plaintiffs in Class A routinely are denied transportation services to enable them to continue to attend their school of origin, or such services are substantially delayed, resulting in missed schooling and lost educational opportunities.

161. Plaintiffs in Class A routinely are denied transportation services comparable to those afforded other children who attend the same school.

162. Plaintiffs in Class A routinely are denied preschool or afterschool educational services.

163. Plaintiffs in Class A routinely are denied appropriate identification and assessment.

164. As a result of Defendants' conduct, Plaintiffs in Class A suffer educational and psychological harm and experience developmental and social delays.

165. Plaintiffs in Class B routinely are denied an opportunity to state the best interests of their children in school selection.

166. Plaintiffs in Class B, when they do express a desire to keep their homeless children in a particular school, routinely have their wishes disregarded even when it is feasible to keep their children at the selected school.

167. Plaintiffs have suffered setbacks in school performance due to missing school because of a lack of transportation.

168. Plaintiffs have suffered setbacks in school performance and emotional difficulties due to having to transfer in the middle of the school year.

169. Plaintiffs' injuries result from Defendants' failure to comply with the McKinney-

Vento Act.

170. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF 42 U.S.C. § 1983

171. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

172. By implementing, authorizing, ratifying, tolerating, permitting, promulgating, continuing to enforce, effectuating and/or acquiescing in the policies, practices and customs pursuant to which homeless children are denied access to public education in Suffolk County, Defendants have deprived and will continue to deprive each and every Plaintiff and members of the Plaintiff classes of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, and of rights guaranteed by the Fourteenth Amendment of the United States Constitution, Article XI, § 1 of the New York Constitution, the McKinney-Vento Act, 42 U.S.C. §§ 11431 – 11435, and New York Education Law § 3209 and the regulations promulgated thereunder.

173. All Defendants have acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. The Defendants' acts described herein were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution. Defendants have conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and

failed to prevent one another from doing so.

174. Defendants knowingly violated Plaintiffs' legal and constitutional rights, and have not acted in good faith.

175. As a direct and proximate result of the misconduct and abuse of authority detailed above, each and every Plaintiff and members of the Plaintiff classes suffered and continue to suffer injury.

176. If Defendants' policies, practices and customs of denying homeless children equal access to public school education is not enjoined, the named Plaintiffs and the members of the Plaintiff classes will be subjected to immediate and irreparable injury for which no adequate remedy at law exists in that members of the Plaintiff class will suffer continued violations of their rights under the Fourteenth Amendment of the United States Constitution, Article XI, § 1 of the New York Constitution, the McKinney-Vento Act, 42 U.S.C. §§ 11431 – 11435, and New York Education Law § 3209 and the regulations promulgated thereunder.

COUNT II
VIOLATIONS OF THE MCKINNEY-VENTO ACT

177. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

178. The McKinney-Vento Act seeks to provide homeless children with "equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth." 42 U.S.C. § 11431(a).

179. Under 42 U.S.C. § 11432(f), the State Defendants are obligated to appoint a Coordinator of Education of Homeless Children to assess the scope of homelessness in the public schools, to develop and implement a plan for educating homeless children, to report to the

federal government and to facilitate coordination among the agencies that educate and provide social services to homeless children and families, and to ensure local educational agency compliance with the Act. Upon information and belief, the State Defendants have failed to meet these obligations by, among other things, failing to make an adequate study of the extent of the problem of homeless students, by failing to implement an appropriate plan for educating homeless children, and by failing to coordinate among the various entities responsible for providing educational and social services to the homeless.

180. The State Defendants have failed to implement the plan submitted to the United States Secretary for Education under 42 U.S.C. § 11432(g)(1) for the appropriate education of homeless children.

181. The State Defendants have failed to set forth appropriate procedures for the “prompt resolution of disputed regarding the educational placement of homeless children and youth” as required by 42 U.S.C. § 11432(g)(1)(A), and the School District Defendants have failed to implement the procedures that have been promulgated.

182. The State Defendants have failed to establish programs and procedures to ensure that “homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children” and that homeless children can participate in before and after school programs as mandated by 42 U.S.C. § 11432(g)(1)(F).

183. The Defendants have failed to address the impediments to enrollment caused by transportation issues and residency and record requirements, in violation of 42 U.S.C. § 11432(g)(1)(F), and have failed to develop, “review and revise, policies to remove the barriers to the enrollment and retention of homeless children and youth” in Suffolk County in violation of 42 U.S.C. § 11432 (g)(1)(I).

184. The Defendants have failed to “adopt policies and practice to ensure that homeless children and youth are not stigmatized or segregated” as required by 42 U.S.C. § 11432 (g)(1)(J)(i).

185. The School District Defendants have failed to provide homeless children with “comparable services” as defined in 42 U.S.C. § 11432(g)(4).

186. The School District Defendants have failed to “coordinate with local social service agencies and other agencies or programs providing services” to homeless children and their families, as required under § 11432(g)(6) and (9).

187. The School District Defendants have failed to “review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools,” as required under § 11432(g)(6) and (9).

188. Defendants have violated the rights of the Plaintiffs and the Plaintiff classes under the McKinney-Vento Act, 42 U.S.C. §§ 11431 - 11435.

COUNT III
VIOLATIONS OF NEW YORK STATE EDUCATION LAW § 3209

189. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

190. Plaintiffs of Class A constitute “homeless children” as defined in New York Education Law § 3209 (1)(a)(1) as they lacked a fixed, regular and adequate nighttime residence or occupy shelters or placed not ordinarily used as a regular sleeping accommodation for human beings.

191. Plaintiffs have been denied the right to attend a public school in the “school district of origin” or the “school district of current location” as those terms are defined in New

York Education Law § 3209 (1)(c) and (d).

192. Defendants have failed to honor the right of homeless children and their families in Suffolk County to designate the school of their choice under New York Education Law § 3209 (2)(a) through (f).

193. Defendants have failed to provide “for the transportation of each homeless child” to and from public school pursuant to New York Education Law § 3209 (4)(a) through (e).

194. The Defendants have failed to implement an appropriate or adequate “regional placement plan,” as defined in New York Education Law § 3209 (1)(e) that provides a comprehensive approach to educational placements for homeless children.

195. The Commissioner of Education and NYSED have failed, as required by New York Education Law § 3209 (5)(a), to develop an appropriate plan to “ensure coordination and access to education for homeless children” and have failed to conduct an appropriate annual review of such plan.

196. The Commissioner of Education and NYSED have failed to periodically monitor school districts’ compliance with New York Education Law § 3209, as required by subsection (5)(b).

197. The School District Defendants have failed to “review and revise any local regulations, policies or practices that may act as barriers to the enrollment or attendance of homeless children in school or their receipt of comparable services” as required under subsection 5(b) of New York Education Law § 3209.

198. The School District Defendants have failed to comply with §§ 722(g)(3 – (7) of the McKinney-Vento Act, as required by subsection 2-a of New York Education Law § 3209.

199. The Social Services Defendants have failed to provide homeless children with

“suitable clothing, shoes, books, food, transportation and other necessities” to enable them to attend school, as required by subsection 6 of New York Education Law § 3209.

200. Defendants have violated the rights of the Plaintiffs and the Plaintiff classes under the McKinney-Vento Act, 42 U.S.C. §§ 11431 - 11435.

COUNT IV
VIOLATIONS OF THE NEW YORK CONSTITUTION, ARTICLE XI, § 1

201. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

202. Article XI, § 1 of the New York State Constitution binds the State of New York to “provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”

203. The Defendants have failed to provide a basic and sound education to the homeless children of Suffolk County because they have failed to enroll or sustain the enrollment of such children in the public schools.

204. The Defendants have failed to provide for a system of schools in which all the children of New York State may be educated. Specifically, the system established by the Defendants fails to provide a system of free public schools for homeless children, by denying them continual access to public school or refusing to enroll them in or transport them to an appropriate public school.

205. Plaintiffs have been injured as a proximate result of Defendants’ violations of Plaintiffs’ rights under Article XI, § 1 of the New York State Constitution.

COUNT V
VIOLATIONS OF THE UNITED STATES CONSTITUTION, 14TH AM., § 1

206. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

207. Under the 14th Amendment to the United States Constitution, § 1, no State shall “deny any person within its jurisdiction the equal protection of the laws.”

208. Public education plays a pivotal role in maintaining the fabric of society and promoting the social, economic and intellectual well-being of the individual. Denial of public education to homeless children forecloses an important means by which such children and their families can alleviate their plight.

209. The Defendants have violated the Plaintiffs’ rights to Equal Protection under the law by systematically refusing and failing to provide the same access to a free public school education enjoyed by students and families of children who are not homeless.

210. Defendants’ actions in denying to the Plaintiffs what is made available to all other residents of Suffolk county were performed without any appropriate basis justification sufficient to overcome Plaintiffs’ substantial interests.

211. Plaintiffs have been injured as a proximate result of Defendants’ violations of Plaintiffs’ rights under Amendment 14, § 1 of the United States Constitution.

COUNT VI
DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. §§ 2201 AND 2202

212. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

213. As set forth above, there is an actual controversy between the Plaintiffs and the Defendants concerning the Defendants’ failure to comply with the requirements of the

McKinney-Vento Act, New York Education Law § 3209 and the State and Federal Constitutions with respect to the provisions of educational and related services to homeless children and their families.

214. Pursuant to 28 U.S.C. §§ 2201 and 2202, the Plaintiffs seek: (1) a declaratory judgment stating that the Defendants have violated the McKinney-Vento Act, New York Education Law § 3209 and the New York and United States Constitutions by erecting, maintaining and failing to remove obstacles to the enrollment and attendance of homeless children in the public schools of Suffolk County.

JURY DEMAND

The Plaintiffs hereby request a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, pray that this Court:

A. Grant a temporary restraining order and preliminary injunction ordering Defendants to enroll homeless students in their designated schools and to provide uninterrupted transportation to and from school, beginning immediately and for the duration of their homelessness and remainder of the current school year, for the Plaintiffs;

B. Certify this case as a class action under Fed. R. Civ. P. 23(b)(2);

C. Declare that Defendants' policies, custom, pattern and practice as described herein violate the McKinney-Vento Act, the United States and New York State Constitutions, New York State Education Law § 3209, and the regulations promulgated under § 3209 and the

McKinney-Vento Act;

D. Preliminarily and permanently enjoin Defendants from keeping in effect, maintaining, or encouraging any of the policies, custom, pattern or practice declared to be violative of law;

E. Direct the Defendants to submit to the Court a comprehensive remedial plan designed to cure their violations of law, and bring them into compliance with the law;

F. Award Plaintiffs their costs and reasonable attorneys' fees; and

G. Award such other and further relief as the Court may deem appropriate.

Dated: February 20, 2004

Respectfully submitted,



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