SIFTON, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT, E.D.N.Y. ☆ SEP 20 2002 ☆ BROOKLYN OFFICE

GO, M.J.

N.T.; S.M., by and through his father K.M.; B.N., by and through his mother R.N.; and J.W. by and through his mother Y.C., on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

NEW YORK CITY BOARD OF EDUCATION; NEW YORK CITY DEPARTMENT OF EDUCATION; and JOEL KLEIN, in his official capacity as Chancellor of the New York City School District,

Defendants.

CV 02 5118

Civ. No.:

CLASS ACTION COMPLAINT FOR INJUNCTIVE, DECLARATORY AND OTHER RELIEF

PRELIMINARY STATEMENT

1. In the Individuals With Disabilities Education Act ("the IDEA"), Congress has required states and school districts to "identify, locate, and evaluate" all children with disabilities (the "child-find requirement"), and provide these children with special education services. Children with emotional or behavior problems are among those who may qualify for special education under the IDEA. In practice, however, the special needs of these children are often not identified. Instead, children who have disabilities are subjected to school discipline procedures designed for non-disabled children; and are excluded, removed, suspended or expelled (or sent to alternative, disciplinary classes or schools) without a determination of their special needs, or of the extent to which their misbehavior may have resulted from a disability, and are denied protections of law.

2. This case seeks to enforce the child-find requirement with respect to such students, the federal, state and local laws that protect them from illegal exclusions, as well as certain related procedural protections, which provide, *inter alia*, that where a school district knows or reasonably should know that a child may have a disability, the child may not be excluded until a proper review of his or her needs is made. Plaintiffs are children with histories of behavior problems and academic failure that have been excluded from school or otherwise disciplined based on their behavior. Plaintiffs' complaint is that the Defendants have no system for ensuring that adequate measures have been taken in each case to implement the "child-find" duty, and afford the child his or her procedural rights and to ensure that superintendents and principals comply with the law.

3. Plaintiffs seek an order requiring the establishment of such a system, and requiring defendants to afford them the rights to which they are entitled. Similar claims are asserted under Section 504 of the Rehabilitation Act and State and Local laws.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 1331, in that claims are asserted under the laws of the United States; under 28 U.S.C. § 1343(a), in that claims are asserted under laws providing for the protection of civil rights; and under 42 U.S.C. § 1983; and the IDEA, 20 U.S.C. § 1400 *et seq., as amended by* Pub. L. No. 105-17 at § 615(I)(3)(A) (1997), in that this action presents claims under the IDEA. This Court has jurisdiction over Plaintiffs' pendent state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. § 2201 and 2202.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

6. If successful, the plaintiffs are entitled to costs and attorneys fees under 42 U.S.C. § 1988 and 20 U.S.C. § 1400 et seq.

7. Plaintiffs have no adequate remedy at law. Unless the defendants and their agents, representatives and employees are preliminarily and permanently restrained, plaintiffs will continue to suffer immediate and irreparable harm from the conduct of which they complain.

PARTIES

8. Plaintiff NT is an 18-year-old girl who lives in New York City and has attended the New York City public schools.

9. Plaintiff SM is 16-year-old boy who resides in New York and has attended New York City public schools. He currently attends a residential school in New York State, pursuant to an IEP developed by a New York City school district. He brings this action by his father, KM.

10. Plaintiff BN is a 13-year-old boy who lives in New York City and attends a New York City public school. He brings this action by his mother, RN.

11. Plaintiff JW is an 11-year-old boy who lives in New York City and attends a New York City public school. He brings this action by his mother, YC.

12. Defendant The NEW YORK CITY BOARD OF EDUCATION ("the Board of Education" or "the Board") was or continues to be the Local Educational Agency under IDEA charged with ensuring that children are provided with a free, appropriate public education in New York City under federal and state law. It is also the official

body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the. City of New York. N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). The Board is the recipient of federal financial assistance under the IDEA.

13. Defendant The NEW CITY DEPARTMENT OF EDUCATION ("Department") is the newly formed government office or LEA charged with ensuring that children are provided with a free, appropriate public education in New York City. It is also the official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the. City of New York. N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). It is the recipient of federal financial assistance under the IDEA.

14. Defendant JOEL KLEIN is the Chancellor of the New York City School District ("the Chancellor") and as such is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-h (McKinney 1930), including the power and duty to control and operate all special education programs and services conducted in New York City Schools and programs.

CLASS ACTION ALLEGATIONS

15. Plaintiffs' claims for relief are brought on their own behalf and on behalf of all those similarly situated pursuant to Rules 23(a) and 23(b), Fed.R.Civ.P. Defendants have acted and refused to act on grounds generally applicable to the named and class plaintiffs, making appropriate declaratory and injunctive relief as to the class as a whole.

16. The class represented by the named plaintiffs is composed of all students with disabilities, not properly identified as such, who have been or will be excluded or

otherwise disciplined based on their behavior and not afforded the procedural protections contained in the IDEA, Section 504 or state and local law.

17. On information and belief, the class consists of several thousand individuals. Hence, joinder of all members is impracticable.

18. There are questions of law and fact in common between the named plaintiffs and the members of the class they seek to represent, *e.g.,* whether the defendants have violated the law by failing to take steps to identify class members with a disability and whether defendants have failed to comply with Federal and State law in excluding them from school.

19. The claims of the named plaintiffs are similar to those of the class they seek to represent, in that they, like the other members of the class, maintain that defendants failed to establish adequate procedures for determining whether they have a disability and failed to afford them certain procedural rights until that determination could be made. Accordingly, the claims of the named plaintiffs are typical.

20. The named plaintiffs will adequately represent and protect the interests of the class. Counsel for the named plaintiffs are experienced in federal class action litigation and will vigorously pursue this action in the interest of the class.

FACTUAL ALLEGATIONS

Overview of the Special Education System

21. In enacting the IDEA, Congress specifically addressed in its findings the need to correct the historical exclusion of children with disabilities from public education: "Before…the enactment of the Education for All Disabled Children Act of 1975…more than one half of the children with disabilities in the United States did not

receive appropriate educational services that would enable such children to have full equality of opportunity." 20 U.S.C. § 1400(2)(B). Congress also found that "1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers." 20 U.S.C. § 1400(2)(C).

22. Congress recognized that without federal pressure school districts frequently did not serve children properly, but instead excluded them from school, warehoused them in [segregated] special education classes, or left them in regular classes with no services to ensure that they could learn. Honig v. Doe, 484 U.S. 305, 308 (1988).

23. Congress further emphasized the importance of preventing suspensions and expulsions of children with disabilities as a disciplinary measure. PL 105-17 states in part: " [R]esearch, demonstration, and practice over the past 20 years in special education and related disciplines have demonstrated that an effective educational system now and in the future must…create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities." 20 U.S.C. § 1451(a)(6)(H).

24. Under the IDEA and relevant implementation regulations, 34 C.F.R. part 300, each state, and each local educational agency (such as a school district) within a state, is required to identify, locate and evaluate every child with disabilities.

25. "Disabilities," as defined by the IDEA, include various mental, emotional, and physical impairments. An example of such a disability is "emotional disturbance," the components of which include "an inability to build or maintain satisfactory interpersonal relationships with peers and teachers" or "inappropriate types of behavior or feelings

under normal circumstances" (together with other factors spelled out in the regulations). 34 C.F.R. § 300.7(a)(9).

26. The IDEA further requires that states and local education agencies ensure that each child with disabilities is provided a free appropriate public education ("FAPE"). A free appropriate public education consists of special education and related services designed to meet the child's unique needs, and provided in conformity with certain procedural safeguards specified by the Act.

27. These procedural safeguards include, *inter alia,* the right of the student's parents to participate in the development of an individualized education program, and to obtain an administrative hearing (and, if needed, an administrative appeal and judicial review) on any complaint concerning the student's education.

28. The IDEA's procedural safeguards also include certain rules relative to discipline. For example, if a child with disabilities misbehaves in school, school officials may propose a change in the child's program or placement. Ordinarily, parental consent is required before the change can be carried out; however, if weapons or drugs are involved, or if the child poses a risk of injury to self or others, the child may be transferred to an "appropriate alternative interim educational setting" – over parental objection if necessary—for up to 45 days.

29. Children with disabilities can also be excluded from school for more than ten days under some circumstances. However, any exclusion from school must be preceded by a determination, made by a multidisciplinary team, of whether the child's misbehavior was related to his or her disability. If a relationship is found, exclusion cannot occur, although changes may be made in the child's program or placement. If the team finds

that the behavior was not related to the disability, the parents can obtain administrative and, if necessary, judicial review of that determination, and the expulsion cannot be carried out until that review is completed.

30. Also, in order to ensure that districts do not avoid the "child-find" requirement, the IDEA imposes certain requirements with respect to children who show signs of disability, but who have not been evaluated or classified. Specifically, where the district knows or has reason to know that the child may have a disability, the child has the right to remain in school until a determination of his or her needs is made, and any administrative or judicial appeals are completed.

31. While this requirement is not new, it has been reinforced by the most recent amendments to the IDEA, which identify a number of specific circumstances under which a district will be deemed to know that the child may have a disability. These include instances in which the child's behavior or academic performance demonstrates the need for special education services; the parent has expressed a concern in writing that the child needs special education, or requested an evaluation of the child; or a teacher or other staff member has at some point expressed concern about the child's behavior or performance.

32. School districts are responsible for implementation of the child-find requirement and these procedural safeguards.

33. The obligation of the school districts to identify and provide appropriate educational services to children with disabilities, and to refrain from excluding or otherwise punishing students for whom there are indications of possible disability, also

arises from Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations thereunder, 34 C.F.R. Part 104.

34. The 14th Amendment to the U.S. Constitution protects children from removals from school without due process of law and removal of children protected by the IDEA must be done in accordance with Constitutional due process.

35. New York Education Law, regulations and policies also contain provisions, designed to implement the IDEA and Section 504, and many of those provisions provide additional protections for children not mandated by federal law.

36. New York Education Law also mandates that children be provided procedural protections before they are removed, suspended, excluded, transferred, discharged or otherwise disciplined from school and alternative education after they are removed.

37. New York Education Law, regulations and policies also contain mandates for educational standards for children and services for at-risk children who do not have disabilities and behavioral problems entitling them to services under the IDEA or Section 504.

38. The Defendants also have policies and procedures governing removals, some of which contain provisions designed to implement federal and state law.

Facts Concerning the Named Plaintiffs

39. NT was born on October 24, 1983 and she is 18 years old. She has a diagnosis of bi-polar disorder. NT has not been enrolled in school since approximately December 2001. She also missed several months of school during the 2000-2001 school year.

40. NT attended catholic school in elementary and junior high school. She moved to the public school system when she graduated from 8th grade.

41. Upon information and belief, NT started high school at Park East High School in the fall of 1997. She attended Park East until some time in the fall of 1999, at which point she transferred to Legacy High School ("Legacy").

42. NT's sister, MT also attended Legacy during the 1999-2000 school year. NT had behavioral problems at Legacy and MT and NT argued with each other. The academics of both girls were suffering. The school requested that either NT or her sister leave.

43. NT was discharged from Legacy at some point prior to the end of the 1999-2000 school year. Defendants did not enroll her in another school for the remainder of that school year or offer her the opportunity to attend summer school.

44. NT did not get enrolled in school again until October 2001, when the family finally secured a seat for her in Lower Manhattan Outreach ("LMO").

45. NT had behavioral and emotional difficulties at LMO, including but not limited to fights and outbursts in class. She lacked concentration, and expressed some paranoid feelings. On one occasion, the school called the family to come pick up NT because she was hiding under a sink after a fight with some girls.

46. In or about March or April of 2001, NT's guidance counselor at LMO told her mother that she had to leave the school, as he felt she needed a smaller school setting that had more support and psychological services. She was not permitted to finish out the school year at LMO.

47. NT's family did not find another school for NT until they located Borough Academy ("BA") and enrolled her in October 2001. By this time, NT had missed another five months of school, and had not been offered the opportunity to attend summer school.

48. Her behavior started to escalate once she went to BA. She started crying, had angry outbursts, cursed at and argued with teachers and ran out of class. She was having a very difficult time concentrating and she eventually stopped going to school regularly. She also had other behavioral problems. Her academics were suffering.

49. At some point in the winter of 2001-2002, the BA school staff suggested that her mother take NT somewhere for a psychiatric evaluation. In mid-January 2002, her mother took her to be evaluated. The following day she was admitted to St. Luke's hospital. At St. Luke's NT was diagnosed with bi-polar disorder and put on medication.

50. NT's grandmother called the school to inform them that NT was in the hospital and that she had a bi-polar diagnosis. She was told by school officials that if NT missed the registration period, she would have to wait out the semester until the following August 2002 registration period to go back to school. She was also told that NT's mother had to agree to discharge NT otherwise the school would have to mark her as a "truant."

51. NT left the hospital on January 31, 2002. To date, she has not been re-admitted into school.

52. On September 9, 2002, NT and her mother met with the school administrators at BA. They told the administrators NT was on medication and was able to return to school, based on her doctor's opinion. At that meeting, however, NT and her mother were told that due to NT's behavior, she probably needed a day treatment program. They were told NT was not allowed to return to school because of her behavior and that the school did not have the resources to address her needs. The Assistant Principal also said many other things that were very hurtful to NT, causing her emotional distress.

53. NT's mother informed the Assistant Principal that she was taking medication on her own and that she had a note from her doctor indicating that she could return to school, but that had no effect on the AP and she refused to enroll NT.

54. At no time did any of the Defendants or their employees or agents refer NT for an evaluation or provide her with the services and protections due to her under federal and state law.

55. NT was not evaluated for a suspected disability, was not provided FAPE and was discriminated against based on her disability. She was illegally excluded from school in violation of the U.S. Constitution, and federal, state and local laws and policies based on her behavior.

56. NT's mother was never provided notice of her rights under federal and state law or information about administrative remedies.

57. At no time did any school offer specific supports, modifications, or services to address NT's needs.

58. NT was not provided with instruction during any of the time that she was excluded from school.

59. No one ever informed NT's mother of her child's right to receive educational services and instruction toward the Regent's diploma. In fact, principals and guidance staff misinformed her about what the school system's obligations were with regard to her children.

60. Upon information and belief, NT needs approximately 14 credits to graduate. She also needs to pass her Regents' exams.

61. Counsel wrote a letter to the Chancellor's attorney on September 11, 2002, informing him of the situation and requesting immediate placement as well as other remedies. To date, defendants still have not offered a school for NT.

62. Plaintiff SM is a 16-year-old student who resides in the district and has just completed what should have been his 10th grade year. Until September 2002, he had earned only 2 high school credits and had been truant for much of his high school career.

63. SM is a child who had above-average potential, but who's learning needs, concentration and attention problems were left unaddressed for so long that he fell several years behind and become discouraged and disengaged from academic pursuit.

64. SM was evaluated for special education services in 1993. At that time, the BOE's evaluators assessed SM's verbal IQ in the Very Superior range and found he had a learning disability.

65. The Board provided SM special education services between 1993 and 1995, during which time his behavior and performance continued to deteriorate. By 1995, SM's writing and decoding had began to be serious barriers for him; his IEP notes that he does not spell sight words, does not use appropriate writing mechanics, and does not use legible and appropriate letter form and size.

66. At the request of the school principal, in July of 1995, SM's father obtained an outside evaluation that diagnosed SM as having Attention Deficit Disorder. The evaluation noted a range of behavior issues and poor performance.

67. Subsequently, SM was provided a prescription for Ritalin. Through use of a "Section 504" form, SM was supposed to be administered this medication in school.

68. In 1996, the Board conducted a triennial evaluation. Despite the fact that SM's school performance and behavior were declining and his evaluations continued to reflect a learning disability and ADHD, the CSE decertified SM, and discontinued the provision of all services.

69. During the 1998-99 school year, SM's school performance and behavior worsened. At the beginning of the 1998-1999 school year, SM's father again requested that SM be provided special education services; again, despite the recognition that he was taking Ritalin, had terrible behavior and was performing well below grade level, he was denied services. The defendants did not refer SM to a Section 504 team or provide any other accommodations at this time.

70. The following school year, SM's behavior began to escalate and his academic performance remained low. All teacher comments on his report cards reflect that he was having problems in school.

71. During the 1999-2000 school year, SM also received no less than 17 behavioral referrals and was suspended from school on a few occasions. Teacher comments on June 26, 2000 reflect that he was having serious difficulties: almost every teacher said he was out of control. SM also received medication in school during that year.

72. It was in high school that SM's problems with truancy started. He started the 2000-2001 school year at Bayside High School. His attendance record reflects extremely poor attendance. In November 2001, he was assaulted twice in school.

73. SM's father requested a safety transfer, but he was out of school for several weeks before a new school was provided. SM was assaulted again at the new school.

74. On or about January 30, 2001, SM's father filed an impartial hearing alleging violations of the child find provisions of the IDEA and Section 504, as well as denial of FAPE under these acts. The District resolved the hearing before it was completed, by conducting an IEP meeting and recommending a residential school for SM.

75. During the hearing, however, the District testified that the CSE does not engage in child find activities under Section 504 and is not aware of any policies or procedures concerning "child find" under Section 504.

76. SN is currently a student with an IEP and is in a residential school, trying to make up for the years of neglect and damage done by defendants.

77. BN is an 8th grade student at IS 126. BN was evaluated in elementary school for special education services but was found to be ineligible. No referral for Section 504 or other supports was made following the determination of ineligibility.

78. During the 2001-2002 school year, BN was attending a school-based mental health program run by LIJ at his school. He had been referred to this program through his school. When this program ended in the Spring, his mother enrolled him in an outside counseling program.

79. The guidance counselor at BN's school once told BN's mother that she believes he has Oppositional Defiance Disorder.

80. During the week of April 15, 2002, there was an incident in school where, allegedly, BN got angry and pulled things off a bulletin board. He continued to attend school for the rest of the week. On Friday, April 19, 2002, his mother received a letter asking her to attend a guidance counsel hearing at the district with the Director of Pupil Personnel. This hearing was scheduled for Monday, April 22, 2002.

81. The parent attended the hearing with BN, and the 7th grade dean from his school. At this hearing, the Director of Pupil Personnel told BN's mother that she recommends that his mother obtain a psychiatric evaluation for BN. BN's mother agreed and began taking steps to make an appointment for such an evaluation. The Director said that BN should have an "in house" suspension and that the suspension could not be at BN's current school, pending results of the outside psychiatric.

82. BN was allowed to take a test at his school on the following day, Tuesday, April 23, 2002.

83. The following day, his mother went to the school to inquire of the Dean where BN should go to school. The Dean told her that BN was no longer enrolled at the school and that she would have to go to the district to find out what to do next. At that point, BN's mother sought the advice of AFC.

84. The Dean informed counsel that he suspected that BN may have been sent to Project Return at PS 76. Project Return was not discussed with BN's mother at the April 22, 2002 meeting, and she never gave her consent to transfer BN to another school. Moreover, BN's mother did not get any information about other possible placements for BN, or any written information about BN's suspension, if indeed he was being suspended, including what he was being suspended for or the length of the suspension.

85. On Friday, April 26, AFC faxed and mailed a letter to the Director pointing out the various violations in this situation, and also asserted the child's IDEA rights because school clearly thought that he may be a student with a disability.

86. On Monday, April 29, 2002 BN's mother went to school with a letter from AFC. The school staff got the Director on the phone, and his mother prevailed on them to re-enroll BN at IS 126.

87. BN attended school that day but brought home a letter from the school that asked his mother to come to a meeting the next day at 1:00 at the District office with the Director. His mother could not make such a hastily scheduled meeting but called the Director several times and left messages with her secretary requesting it be rescheduled. She never received a response to her request.

88. On Wednesday, May 1, BN brought home another letter saying that since Ms. Nix had not come to the district office meeting, BN would again be transferred to Project Return. The school shared the content of letters with BN, greatly upsetting him, telling him that he is no longer enrolled at the school and is not wanted.

89. BN's mother filed a request for an impartial hearing on May 10, 2002, requesting that BN be reenrolled at IS 126. On May 13, 2002, the school finally readmitted BN.

90. Overall, BN missed approximately three weeks of school without any instruction due to defendants' illegal actions.

91. JW is an 11 year-old boy with ADHD. He has had a Section 504 plan to receive medication in school for a number of years.

92. In or about the beginning of February 2002, JW was removed from his regular class due to behavior and placed into a dean's intervention room at the school. In the room, he sat alone or with one or more students, and got his homework and classwork assignments brought to him. He received no direct instruction.

93. JW remained in this intervention room for approximately one month. During this time, his parents never received notice of the suspension or removal, of a hearing or of a conference or manifestation determination.

94. During that time, the Deputy Superintendent had told his parents that he would not take JW out of the in-house suspension unless they filled out the paperwork requesting a Section 504 paraprofessional. JW's parents did fill the papers out, but the Deputy Superintendent did not provide the para. Eventually, the school provided a para informally on its own. This para was not provided pursuant to a Section 504 plan, or as a result of any team meetings. Moreover, evaluations were not conducted.

95. After AFC contacted the principal, the school took him out of suspension. However, he could not return to his regular class (level 2) because his mother had a corporal punishment complaint against the teacher and he had gotten into a fight with other students in the class. He could not go into the level 1 class because he had previously had too many fights with the children in that class. As a result, he was put back into the level 3 class, even though he had previously been moved from that class because he was too high functioning.

96. On or about March 14, 2002, AFC filed an impartial hearing, which was subsequently re-filed on March 25, because the Board did not receive the original request. After a hearing on April 15, 2002, the hearing officer rendered a decision on the record in favor of the parent and ordered the district to transfer JW to another school with an appropriate class, as the school testified that there were no appropriate classes for him in their school.

97. Despite the order, the Defendants did not transfer JW until September 2002, after AFC and the central Defendants office of legal services contacted the district numerous times during the summer.

98. Before the illegal exclusion or suspension, JW's academic performance was above average; by the time her returned to class, he was at-risk of being held over. Additionally, JW had been marked absent for every day he had spent out of class in the Dean's intervention room. Eventually, AFC was able to remove these absences from his record.

Further Allegations

99. The Defendants' website contains documents called "school profiles" for the school years 2000-2001, 1999-2000 and 1998-1999. Those documents reflect that for high school programs alone, approximately 55,000 students were "discharged" per year from the high schools. Upon information and belief, there were at least that many, if not more, students discharged during the 2001-2002 school year and students who have already been discharged during this September. Upon information and belief, some of these students are class members.

100. Upon information and belief, there are approximately 50,000 recorded suspensions per year in New York City. Upon information and belief, some of these students are class members.

101. Upon information and belief, there are thousands of students in the Defendants' alternative programs and sites, who are not being tracked for discharge, suspension, expulsion and exclusion, including but not limited to offisite educational services, literacy programs and programs for parenting teens. Upon information and

belief, there are class members who are in those programs who have been excluded from regular schools because of their behavior and class members who have been excluded from those programs in violation of law.

102. The Defendants' websites reflect that a few thousand students were on the registers of high school outreach/alternative education centers. Upon information and belief, some of these students are class members.

103. Upon information and belief, thousands more students were suspended who are not reflected on the registers of high school outreach centers, and some of these students are class members.

104. Upon information and belief there are many class members who are "unofficially" excluded and who do not turn up in any reported statistics.

105. Based on documents received from the Defendants, there are at least 2,551 children receiving medication via Section 504 in the Community School Districts. This does not reflect all of the children who are receiving medication for a disability. Upon information and belief, some of the students who receive medication are class members.

106. Many of the children whom the District has subject to discharge, removal, informal exclusion, suspension and expulsion are children who have had long histories of behavior problems.

107. The behavior of many of these students demonstrates a possible need for special education, accommodations or other services, in that, *inter alia*, their behavior is consistent with the legal definition of disabilities, such as emotional disturbance or other health impaired, as set forth in the IDEA and state law.

108. In still other cases, on information and belief, the student's record demonstrates some other basis on which the District would be deemed to have knowledge that a disability might be present, such as an expression of concern by a teacher or parent, history of hospitalizations, use of medication, or former receipt of special education services.

109. The Defendants have not developed a system to ensure that Superintendents and Principals are held accountable for complying with federal, state and local laws and polices that protect the rights of class members.

110. The Defendants have never put any organized system in place to ensure that, before a child is excluded from school, discharged, suspended or expelled due to behavior that he or she is reviewed to determine whether there are indications of a disability and that the student's parent is provided information about rights and possible services.

111. The Defendants do not have adequate Section 504 policies and procedures that comport with relevant federal or state law or adequate systems of notifying parents of rights under Section 504.

112. Class members are being irreparably harmed, in that their disabilities are going undetected and unaddressed; in that they are being punished for behavior that may relate to their disabilities; and in that they are not receiving appropriate educational services.

113. Defendants' failure to establish adequate procedures for identifying children with disabilities prior to exclusion, and for affording those children their rights under federal, state and local law, is a systematic legal violation. As such, it cannot be

effectively remedied through administrative hearings, which focus on one child a time and cannot result in systematic or classwide relief. Moreover, on questions of law, hearing officers do not have unique or specialized expertise. Accordingly, exhaustion of administrative remedies is not required in this case.

114. Defendants' practices of excluding children with disabilities from school without identifying them, affording them protections and educational services to which they are entitled under federal and state law is a systematic legal violation. As such, it cannot be effectively remedied through administrative hearings, particularly since class members have not have received adequate notice of their rights to protections and administrative remedies.

115. Defendants widespread practice of excluding class members from school without appropriate educational services cannot be remedied through administrative hearings.

116. Exhaustion is also not required because, in cases where a child is excluded, suspended, removed or expelled from class or school, the special education administrative process typically does not operate quickly enough – especially if either party chooses to take an appeal from the initial decision – to reach a conclusion before the expulsion or transfer actually takes place. Particularly in New York City and State, where administrative decisions are rarely, if ever, rendered in 45 days and the State Review Office often takes several months and even more than one year to respond to complaints.

117. Nor is exhaustion required for the state law claims; class members allege illegal policy and systemic violations and the remedies sought here would not be available through another state administrative process.

CAUSES OF ACTION

118. Defendants have failed to adopt adequate policies and procedures to ensure that class members are "found" and afforded the services and procedural protections under the IDEA, 20 U.S.C.A. § 1400, et. seq.

119. Defendants have violated the IDEA by failing to identify, evaluate and offer services to class members within a reasonable time after becoming aware of behaviors and academic failure which indicated a disability, and which demonstrated the need for special education services, and by refusing to afford them the procedural projections to which they are entitled under the IDEA, 20 U.S.C.A. § 1400, et. seq.

120. Defendants have failed to adopt adequate policies and procedures to ensure that the class members are "found" and not subject to discrimination under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq.

121. Defendants have violated class members' rights under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

122. Defendants have discriminated against class members in violation of the equal protection and due process provisions of the U.S. and New York Constitutions. U.S. Const., Amend. 14; N.Y. Const. Art. I § 11.

123. Defendants have violated class members' rights by failing to identify, evaluate and offer services within a reasonable time after becoming aware of behaviors

and academic failure which indicated a disability, and by refusing to comply with the requirements of Section 504.

124. Defendants have failed to adopt adequate policies and procedures to ensure that the plaintiff class members are afforded the due process procedures and accommodations required by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. and New York State Education law.

125. Defendants have denied class members access to school without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, New York State Law and Chancellor's regulations.

126. Defendants have violated class members rights by excluding them from school in violation of New York State Education Law and Chancellor's regulations

127. Defendants have adopted, promulgated and implemented policies affecting class members that violate the Due Process Clause of the 14th Amendment, the IDEA and State law.

128. Defendants have violated the IDEA and State Law by failing to ensure that class members were provided FAPE and legally appropriate alternative education during periods of exclusion.

129. Defendants have violated New York State Education law and the due process clause of the New York State Constitution by adopting policies and practices that permit the permanent expulsion of class members.

130. Defendants have violated Section 504, the IDEA and State Law by illegally excluding, suspending, disciplining, expelling and discharging students with

disabilities from class and school based on their behavior, without identifying them as disabled and affording them the procedural protections due under law.

RELIEF

131. WHEREFORE, plaintiffs request that this Court:

a. Assume jurisdiction of this case;

b. Issue a declaratory judgment that Defendants have violated plaintiffs' rights as set forth above;

c. Issue an injunction restraining the Defendants from failing to comply with federal and state law and Chancellor's Regulations;

d. Enter a preliminary injunction requiring that the District immediately enroll NT in an appropriate small program, pending a full determination of her eligibility for special education or Section 504 eligibility, and any administrative or judicial proceedings that may follow such determination;

e. Award to NT and the other named plaintiffs compensatory educational services and compensatory damages;

f. With respect to class members, establish and maintain policies and procedures designed to ensure that they are identified and provided with all mandated services and procedural protection and are not excluded from school.

g. With respect to class members not already excluded, discharged, suspended or expelled, enter a permanent injunction requiring Defendants to establish and maintain, on an ongoing basis, a system sufficient to ensure that:

i. The "child-find" requirement and all other relevant laws requiring due process prior to exclusion, removal, discharge, suspension or expulsion from school are fully implemented;

ii. For children whom the district knows, or should know, to have a disability, the child is not excluded, removed, suspended, discharged or expelled from any class or school based on behavior before an adequate determination is made as to whether a disability is present (and until any administrative appeals and judicial review are completed); is transferred to an alternative school or class or otherwise disciplined only in a manner consistent with applicable law; and is afforded all other procedural and substantive rights with respect to special education.

h. With respect to class members already excluded, discharged, suspended or expelled, over the past three school years, enter a permanent injunction requiring the Defendants to ensure that:

i. With the consent of the parent, the child-find requirements are fully implemented;

ii. For those children who are determined to have disabilities, the child is afforded all other procedural and substantive rights with respect to special education, Section 504, due process and educational services set forth in applicable law.

i. With respect to class members already excluded, discharged, suspended or expelled without due process as required by the U.S. Constitution and/or in violation of state or local law,

i. Locate and offer immediate reinstatement to the former program or locate another appropriate program;

ii. Provide compensatory educational services.

j. With respect to all class members, enter a permanent injunction requiring Defendants to

i. Refrain from denying class members legally adequate educational services without due process of law;

ii. Develop a system to hold Superintendents and Principals accountable for complying with relevant federal, state and local laws and polices designed to protect the rights of class members from illegal exclusion and denial of educational services, which shall include, but not be limited to, (1) training of personnel sufficient to ensure that they know and understand the applicable laws and (2) paying for an independent monitor to oversee, develop and implement the system and track removals and identification of children.

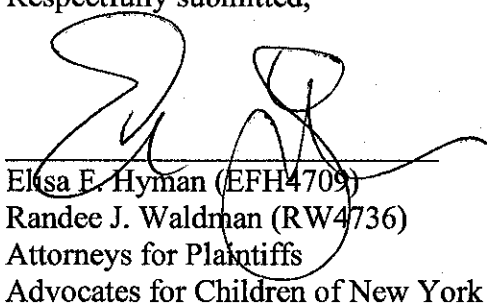
iii. Disseminate notices to parents of all students expelled, discharged, suspended or otherwise excluded informing them of this action and providing them with plaintiff counsel's contact information.

k. Award to Plaintiffs their costs and attorneys fees; and

l. Grant such other and further relief as may be appropriate.

Dated: September 20, 2002
New York, New York

Respectfully submitted,



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