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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DAN CAMACHO, a minor, through his mother, :  
Eleanor Camacho, 2241 S. Beechwood St., :  
Philadelphia, PA 19145, :

KENNETH JENKINS, a minor, through his :  
grandmother, Viola Jenkins, 2702 W. Silver St., :  
Philadelphia, PA 19132, :

KEITH COOPER, 2147 N. Van Pelt St., :  
Philadelphia, PA 19121, :

Plaintiffs, :

v. :

THE SCHOOL DISTRICT OF PHILADELPHIA, :

Defendant. :

CLASS ACTION

No. 003675

September Term 2002

**AMENDED COMPLAINT**

## PRELIMINARY STATEMENT

I. Plaintiffs are students who are enrolled or who seek to enroll in the Philadelphia School District. They challenge the constitutionality of Section 2134 of the Pennsylvania School Code, 24 P.S. § 21-2134, *as amended*, which provides that, because they have been discharged from a juvenile delinquency placement, they may not return directly to the regular public schools of Philadelphia. Instead, these students must be placed in “alternative schools for disruptive students” or other alternative education placements, unless the child’s offense falls outside of certain specified categories, in which event the School District may, but need not, permit the child to return to a regular school.

Plaintiffs contend that Section 2134 is unconstitutional because it treats them differently from all other children in the Commonwealth. In every school district *other* than Philadelphia, and even in public charter schools *in* Philadelphia, a child can be excluded from regular school only on the basis of an individualized determination, following a due process hearing, that he or she has violated school rules. By contrast, plaintiff class members are irrebuttably presumed, if their offense falls into one of the categories listed in the statute, to be unfit to attend regular school. If the student’s offense does not fall into one of those categories, he or she *may* – but need not – be permitted to attend regular school, and the law specifies no standards or process by which that decision is to be made. Plaintiffs contend that Section 2134 is inconsistent with Article III, § 32 and Article I, §§ 1, 11, and 26 of the Pennsylvania Constitution, and with the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Plaintiffs do not, in this lawsuit, challenge the authority of the Philadelphia School District to remove from the classroom students who, on the basis of an individual review comporting with the requirements of due process, are found to present a threat to school safety. Indeed, the Philadelphia School District (like every other district in the Commonwealth) has had the authority to do that since long before Section 2134 was enacted, and retains that authority today. Nor do plaintiffs dispute the authority of juvenile courts in appropriate cases to delay the return to regular classes of youth who have been in placement under the Court's supervision pursuant to the Juvenile Act. Plaintiffs' dispute, instead, is with the Legislature's decision to permit, and in many cases mandate, the School District to exclude them from regular classes on the basis of their juvenile history, without regard to their academic or school disciplinary records.

Named plaintiffs sue on behalf of themselves and all other students similarly situated. Declaratory and injunctive relief are sought.

## PARTIES

II. Plaintiffs are youth who have been adjudicated delinquent under the Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 *et seq.*, and who reside in, and are eligible to attend the public schools of, the defendant School District of Philadelphia (hereafter "the School District" or "the District").

III. Defendant is a public school district constituted pursuant to Pennsylvania law, 24 P. S. §2-201 *et seq.* It is classified as a school district of the first class, and is the only district so classified. It is currently under the management of a School Reform Commission established pursuant to 24 P.S. §6-696 *et seq.*

## JURISDICTION

IV. This Court has jurisdiction under 42 Pa.C.S. § 931.

## CLASS ACTION ALLEGATIONS

V. The named plaintiffs bring this action on behalf of a class consisting of all students who are subject to 24 P.S. § 21-2134, *i.e.*, all Philadelphia students eligible for enrollment in the regular schools in Philadelphia who have been adjudicated delinquent and are returning from placement.

VI. The class consists of at least 1400 youth, including unknown future members; hence, joinder of all members is impracticable.

VII. There are questions of law or fact common to the class, *e.g.*, whether Section 2134 violates the Constitutions of Pennsylvania and the United States.

VIII. The representative plaintiffs will fairly and adequately assert and protect the interests of the class, in that their attorneys are experienced in litigation in the areas of education and juvenile law; the representative plaintiffs have no conflicts of interest in the maintenance of this class action; and, because legal services are being provided *gratis*, there is no issue of adequacy of financial resources on the part of the representative plaintiffs.

IX. A class action provides a fair and efficient method for adjudication of this controversy, in that solely declaratory and equitable relief are sought, and that, in enforcing Section 2134, defendant is acting on grounds generally applicable to the class.

## FACTS

### Named Plaintiffs

#### *Plaintiff D.C.*

X. Plaintiff Dan Camacho (hereafter “D.”) is a 16-year-old youth who lives with his mother, Eleanor Camacho, within the Philadelphia School District.

XI. During school year 2001-02, D. was assigned to Furness High School for tenth grade. He developed a truancy problem and received below average and failing grades.

XII. In May 2002, D. was arrested for unauthorized use of an automobile, a non-violent property offense. D. was adjudicated delinquent by the Juvenile Court on that charge in May 2002. This was D.’s first and only delinquency adjudication.

XIII. In May 2002, the Juvenile Court ordered D. placed in an out-of-home placement for juvenile delinquents operated by Vision Quest. D. remained there from May 2002 until early August 2002.

XIV. D.’s placement at Vision Quest was successful. According to Vision Quest reports filed with the Juvenile Court, D. adjusted to the program and worked well with others. He also made good progress in individual and group counseling.

XV. In August 2002, Vision Quest and D.’s juvenile probation officer recommended that D. be discharged from the facility and returned to the custody of his mother.

XVI. At that point, D. intended to re-enter high school in Philadelphia, and also planned to play inter-scholastic football and baseball.

XVII. Shortly after D.'s discharge from Vision Quest, D.'s mother attempted to enroll him at South Philadelphia High School, but was informed by school officials that he could not attend classes there or play for its sports teams.

XVIII. Subsequently, D.'s mother received a letter from the School District stating, in essence, that because of Section 2134, D. was required to be assigned to a transition center.

XIX. D. spent several days at Reti-Wrap, the School District's transition program, during the month of August 2002. At the conclusion of his stay, Reti-Wrap officials informed D.'s mother that he would be required to repeat tenth grade, and would not be permitted to attend a regular day school program.

XX. D. missed two weeks of school while waiting to be referred to an alternative education program by the School District.

XXI. Since September 2002, D. has attended an alternative school for disruptive students operated by a for-profit company, Community Education Partners ("CEP"), under contract with the School District. The program at CEP is more limited than that available in a regular high school and also offers D. no opportunity to play inter-scholastic athletics.

*Plaintiff K. J.*

XXII. Plaintiff Kenneth Jenkins (hereafter "K.J.") is a 16-year-old youth who lives with his grandmother, Viola Jenkins, within the Philadelphia School District.

XXIII. During the 2000-01 school year, K.J. was assigned to Thomas FitzSimons Middle School for eighth grade. He had many latenesses and absences and received below average and failing grades.

XXIV. In October 2000, K.J. was charged with unauthorized use of an automobile, a non-violent property offense, and adjudicated delinquent by the Juvenile Court in January 2001. This was K.J.'s first and only delinquency adjudication.

XXV. In late January 2001 the Juvenile Court ordered K.J. placed in an out-of-home placement for juvenile delinquents operated by Vision Quest. K.J. remained there for approximately one month until late February 2001, and was then transferred to Summit Academy, another out-of-home placement located in western Pennsylvania. K.J. remained at Summit from February 2001 until June 2002.

XXVI. K.J.'s sixteen months at Summit were successful. According to reports filed with Juvenile Court, K.J. adjusted to the program and worked well with others. K.J. attended school, received passing marks, and earned credits for completing ninth and tenth grades.

XXVII. In June 2002 the Juvenile Court discharged K.J. from Summit and committed him to the custody of his grandmother, Viola J. At that point, K.J. intended to enter Simon Gratz High School in Philadelphia.

XXVIII. However, shortly after K.J.'s discharge from Summit, K.J. and family received a letter from the School District stating that because of Section 2134, K.J. would be assigned to a transition center.

XXIX. K.J. spent the first week of the 2002-2003 school year attending Reti-Wrap, the School District's transition program. At the conclusion of his stay, Reti-



Wrap officials informed K.J.'s grandmother mother that he could advance to the eleventh grade, but would not be permitted to attend a regular day school program.

XXX. Since September 2002, K.J. has attended an alternative school for disruptive students operated by a for-profit company, Community Education Partners ("CEP"), under contract with the School District. The program at CEP is more limited than that available in a regular high school.

*Plaintiff K.C.*

XXXI. Plaintiff Keith Cooper (hereafter "K.C.") is an 18-year-old youth who resides with his mother, Carolyn Cooper, in the Philadelphia School District.

XXXII. K.C. has never been a disruptive student. However, he began to display a serious truancy problem in his middle school years.

XXXIII. For school year 1999-00, K.C. was assigned to Germantown High School. He had many latenesses and absences and earned no credits for the year. K.C. returned to Germantown High School in the fall of 2000.

XXXIV. In November, 2000, K.C. was charged with possession of marijuana and placed on a consent decree, which required, *inter alia*, that he attend school.

XXXV. K.C.'s truancy problem continued.

XXXVI. On August 24, 2001, K.C. was adjudicated delinquent on the marijuana charge.

XXXVII. On September 10, 2001, K.C. was ordered placed at Summit Academy, a juvenile facility in western Pennsylvania. He remained there from September, 2001, to July, 2002.

XXXVIII. K.C.'s year at Summit was successful. According to reports from the facility, he assumed responsibility for his mistakes and demonstrated a good work ethic and attitude. In school, K.C. "took his educational obligations seriously," "was never a behavior problem," and displayed "outstanding academic performance."

XXXIX. By the end of his stay at Summit, K.C. had completed enough credits to enter eleventh grade.

XL. K.C.'s discharge summary from Summit states that he was viewed as a role model among his peers, that he displayed leadership skills, and "achieved numerous positive accomplishments throughout his commitment, including his achieving Honor Roll status in school and being a member of both the Pep Club and the Student Advisory Committee."

XLI. In July, 2002, Summit Academy and K.C.'s probation officer recommended that he be discharged from the facility. On July 24, 2002, Judge Clark approved K.C.'s discharge, and assigned him to aftercare probation with De La Salle Aftercare.

XLII. At that point, K.C.'s intention was to reenter high school in Philadelphia. He hopes to complete his eleventh and twelfth-grade years, and eventually to become an electrician or mechanic.

XLIII. However, because of Section 2134, K.C. was not permitted to enroll in school. Instead, he was assigned to Reti-Wrap, the District's transition program.

XLIV. K.C. spent several days at Reti-Wrap in August, 2002. At the conclusion of his stay, Reti-Wrap personnel informed K.C.'s mother that, because of Section 2134, K.C. would not be permitted to attend a regular day school program.

XLV. The District provided no further information to K.C.'s mother during August, 2002. In September, 2002, having heard nothing, K.C.'s mother attempted to enroll him at Germantown High School; however, she was informed that he could not attend there.

XLVI. In mid-September, K.C.'s mother received a letter saying that K.C. would be assigned to the "twilight," *i.e.*, after-hours, program at Ben Franklin High School. K.C.'s mother made several calls to that program, but several months passed before K.C. was given a starting date.

XLVII. K.C. attended the GED program at his aftercare agency, De La Salle, for a period while awaiting word on his school assignment, and then decided to find a job.

XLVIII. At no point has the School District offered K.C. the opportunity to attend a regular day school program.

#### The Plaintiff Class

XLIX. Philadelphia youth who are charged with delinquent acts are subject to the jurisdiction of the juvenile court, a branch of the Family Division of the First Judicial District of Pennsylvania.

L. Under the Juvenile Act, juvenile court judges have authority, *inter alia*, to place adjudicated delinquent youth on probation, order the youth to pay fines or

restitution, or commit these youth to public or private day treatment programs and residential placements for delinquent youth. The court is also required to ensure that youth receive treatment, rehabilitation and supervision. Since 1996, when Act 33 of 1995 became effective, the disposition ordered by the juvenile court judge must further address public safety, accountability to victims, and the youth's development of competencies necessary to become a productive adult. *See* 42 Pa.C.S. §§ 6301, 6352.

LI. As of May, 2002, there were about 1,393 Philadelphia youth in residential placements as a result of a delinquency adjudication, and, on information and belief, many additional youth in day treatment programs as a result of such an adjudication.

LII. Most of these youth have not committed violent offenses. In the year 2000, for example, only about one in four adjudicated youth in Philadelphia were found to have committed crimes against persons. Approximately 28% of "substantiated offenses" involved property, while another 24% involved other, non-violent conduct. Drug offenses accounted for the remaining 29% of the total.

LIII. In addition, most delinquency adjudications involve events occurring outside of the school setting.

LIV. Thus, the fact that a child belongs to the plaintiff class does not necessarily imply that he or she has violated school rules, or committed a violent offense, nor does it necessarily imply anything about the child's current behavior, in or out of school.

LV. Further, a child may be assigned to a juvenile placement for a period of months or years following the commission of an offense. Thus, in the case of any given class member, the offense at issue may have taken place a year or more ago.

LVI. Children who are placed at a juvenile facility attend school either in or outside the facility, may receive academic credit for such attendance, and are required to conform their behavior to the requirements of the school and the facility.

LVII. The fact that a child is discharged from a juvenile placement typically means that, in the judgment of the court, the child's behavior has improved and he or she is ready to return to his or her family and community.

LVIII. For these reasons, the mere fact that a child is a member of the plaintiff class – *i.e.*, that he or she is returning from day or residential placement – does not imply that he or she has, or currently does, pose a threat to school safety.

#### Disciplinary Procedures in the School District of Philadelphia

LIX. According to statistics maintained by the state Department of Education, the rate of acts of violence and/or weapons possession in the Philadelphia School District is similar to that of many other areas of the state. For example, the figures for school year 2000-2001 show a rate of 17.4 incidents of violence and/or weapons possession per 1000 students in Philadelphia. This is a moderately *lower* rate than that for all students in all counties (20.12 per 1000). Some counties have significantly higher rates than Philadelphia's; other counties show lower rates.

LX. The Philadelphia School District, like all other districts in the Commonwealth, has broad power to respond to discipline problems in its schools. This

power begins with the authority to define the types of conduct that will result in disciplinary sanctions, and the nature of the sanctions that will be imposed.

LXI. Pursuant to this grant of authority, the Philadelphia School District has for many years had in place a Code of Student Conduct.

LXII. The most recent version of the Code, which dates from September, 2002, classifies offenses into two levels.

LXIII. Level I includes such offenses as “disruption of school,” including *inter alia* failure to follow directions from staff, failing to behave in an appropriate manner, running in the hall, and fighting; disruptive and/or offensive use of language; damage, destruction or theft of school property or private property; reckless endangerment or threats, possession or use of tobacco products; possession of drugs or alcohol for personal consumption; and abuse of computer/internet privileges. A Level I offense can result in a variety of possible sanctions, such as a meeting with the teacher or counselor, assignment to detention or a Saturday program, and suspension from privileges or from school.

LXIV. Level II includes such offenses as harassment of another student or staff person, indecent exposure, assault, possession of a weapon, and various other “aggravated offenses.” Repeated Level I violations are also considered a Level II offense. Possible sanctions for Level II offenses include transfer to an alternative education program or “twilight program,” or expulsion.

LXV. Except in cases in which Section 2134 comes into play, which are described more fully below, all sanctions imposed by the School District are premised

upon an allegation that the student has committed a violation of the Code of Student Conduct.

LXVI. Moreover, the sanction imposed in each case is selected with reference to the circumstances of the offense and the student. Thus, the Code of Student Conduct requires that “[s]taff members shall consider all mitigating circumstances prior to disciplinary action,” and notes that “[m]itigating circumstances include, but are not limited to, the following factors: age, health, maturity and academic placement of a student; prior conduct; attitude of a student; cooperation of parent/guardian; willingness to make restitution; seriousness of offense; and willingness of student to enroll in a student assistance program.”

LXVII. In addition, pursuant to state and federal law, a due process hearing procedure is available to any student who contests a proposed disciplinary sanction.

LXVIII. For example, under state regulations, 22 Pa. Code Ch. 12, a student who is suspended must be offered an “impartial hearing.” A student for whom expulsion is proposed must be provided with a “formal hearing” before the school board.

LXIX. Due process procedures are also available when the proposed disciplinary action is a transfer to another school.

LXX. If the transfer is to another regular school, the applicable procedures derive from an order and consent decree entered in *Everett v. Marcuse*, 426 F.Supp. 397 (ED PA 1977). In that case, the court found that such transfers “bear[] the stigma of punishment,” and approved a set of procedures under which an impartial decision-maker must find, following a hearing, that the student has committed the offenses of which he or she was accused and that the transfer is warranted.

LXXI. Another federal court decree applies to transfers to “disciplinary schools.” “Disciplinary school” is the term that Philadelphia has historically used to describe its special schools for disruptive students. More recently, the legislature adopted the phrase “alternative schools for disruptive students” to describe such facilities. *See* 24 P.S. §19-1901-C *et seq.* (Disruptive Student Programs); 24 P.S. §19-1901-E (“Private Alternative Education Institutions for Disruptive Students”).

LXXII. Philadelphia currently operates three disciplinary (or “alternative”) schools for disruptive students, and also contracts with a private provider, Community Education Partners, for the operation of an additional such school.

LXXIII. The procedures for transfers to disciplinary schools were initially laid out in a decree in *Dunmore v. School District of Philadelphia*, No. 72-43 (ED PA, February 14, 1973, *amended*, April 29, 1974).

LXXIV. The *Dunmore* decree provides more extensive procedural protections than are available in cases of transfers to other regular schools. These protections include a hearing before an impartial fact-finder, followed by a possible appeal to an arbitrator. Here again, the transfer to a disciplinary school can occur only on the basis of a specific finding that the student has violated school rules and that the transfer is appropriate.

LXXV. Because Philadelphia’s disciplinary schools also qualify as “alternative schools for disruptive students,” students who are transferred to them – or at least students other than those covered by Section 2134 – are entitled to additional protections under state law. State law defines “disruptive student,” and provides for due



process procedures to ensure that students assigned to these schools do, in fact, qualify.

24 P.S. §§19-1901-C(5), 19-1902-C(2), 19-1901-E(2).

LXXVI. Under state law, a “disruptive student” is:

A student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment or whose behavior materially interferes with the learning of other students or disrupts the overall educational process. The disruptive student exhibits to a marked degree any or all of the following conditions:

(i) Disregard for school authority, including persistent violation of school policy and rules.

(ii) Display or use of controlled substances on school property or during school-affiliated activities.

(iii) Violent or threatening behavior on school property or during school-affiliated activities.

(iv) Possession of a weapon on school property, as defined under 18 Pa.C.S. § 912 (relating to possession of weapon on school property).

(v) Commission of a criminal act on school property or during school-affiliated activities.

(vi) Misconduct that would merit suspension or expulsion under school policy.

(vii) Habitual truancy.

24 P.S. § 19-1901-C(5).

LXXVII. In summary, the Philadelphia School District has promulgated a Code of Student Conduct defining the offenses that will result in disciplinary action, including transfer to disciplinary and alternative schools; and – at least for all students other than those covered by Section 2134 – there are standards and due process hearing procedures, defined by federal and state law, for determining which students have committed offenses sufficient to justify such discipline.

### Disciplinary Procedures in Other Pennsylvania School Districts and Schools

LXXVIII. Pennsylvania has 500 school districts in addition to the School District of Philadelphia. These districts, together with public charter schools (including many charter schools located in Philadelphia), intermediate units, vocational-technical schools, and other entities, make up the Commonwealth's public education system.

LXXIX. All of these schools and school districts suspend and expel students, and many of them also transfer students to alternative schools for disruptive students.

LXXX. In all of these other school districts and entities, disciplinary action is premised on a finding that the student has actually violated school rules and that the sanction is appropriate in light of the violation; and due process is available to a student who challenges a proposed disciplinary action. *See* 22 Pa. Code Ch. 12 (suspensions and expulsions); 24 P.S. § 19-1902-C(2) (transfers to alternative schools).

LXXXI. In all of these other school districts and schools, moreover, when a transfer to an alternative school for disruptive students is proposed, state law requires a finding that the student is a "disruptive student" as defined above. 24 P.S. § 19-1901-C(5).

### Recent Developments in the Philadelphia School District: Recommendations of the School Reform Commission Concerning Students Returning from Placement

LXXXII. In December, 2001, a group of state legislators issued a "Strategic Plan to Eradicate Violence and Impose a Disciplinary Structure in the Schools of the Philadelphia School District."

LXXXIII. One section of the Strategic Plan pertained to students returning from juvenile delinquency placements (referred to, inaccurately, as “incarceration”) to District schools. With regard to these students, the Plan recommended that “the School District should be empowered with the decision-making authority to determine the school of placement for the returning formerly incarcerated student.”

LXXXIV. In response to the Strategic Plan, James Nevels, Chairman of the Philadelphia School Reform Commission, appointed a Task Force on Violence. The Task Force included a diverse group of key stakeholders, including two of the state representatives who had issued the Strategic Plan; the City Managing Director; the President Judge of Philadelphia Family Court; the Chief of the Juvenile Division of the Office of the District Attorney; his counterpart at the Defender Association; the head of the Philadelphia Chamber of Commerce; the President of the Philadelphia Federation of Teachers; and the President of the Masterman Home and School Association.

LXXXV. In May, 2002, Mr. Nevels announced that the District would adopt the recommendations made by the Task Force on several issues.

LXXXVI. One such recommendation was that students returning from juvenile delinquency placements be thoroughly assessed before being assigned to a school.

LXXXVII. The Task Force did not recommend, nor did the School Commission conclude, that all students returning from placement should be assigned to alternative schools. Rather, the purpose of the assessment was to determine which students should be returned to regular schools, and which should be assigned to alternative programs.

Further Developments: Section 2134

LXXXVIII. Notwithstanding the decisions of the School Reform Commission and the recommendations of the Task Force, on June 28, 2002, the General Assembly passed Act 88 of 2002, creating Section 2134 of the School Code. The Governor signed the bill the following day.

LXXXIX. Section 2134 was placed within Article 21 of the School Code, which applies solely to school districts of the first class (and therefore, solely to the School District of Philadelphia).

XC. As enacted in June, 2002, Section 2134 stated:

Placement of Certain Adjudicated Students.--

No student returning from placement or who is on probation as a result of being adjudicated delinquent under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who has been adjudged to have committed a crime under an adult criminal proceeding shall be returned directly to the regular classroom. Prior to returning such student to the regular classroom, the school district shall:

(1) Place the student in a transition center operated by the school district for a period not to exceed four (4) weeks.

(2) Develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student and establishes terms and conditions the student must meet prior to returning to the regular classroom.

(3) Place the student in an alternative education program as defined in Article XIX-C, in a private alternative education institution as defined in Article XIX-E, in a general education development program or in a program operating after the traditional school day, as provided for in the transition plan developed pursuant to clause (2).

XCI. The new Section 2134 became effective immediately, and this action was filed shortly thereafter.

XCII. Subsequent to the filing of this action, the Legislature amended Section 2134 via Act 187 of 2002, signed by the Governor on December 9, 2002. The amendment removed students on probation from the coverage of the Act. In addition, while the Act continued to extend to all students returning from placement, the amendment provided for some changes in the procedures applicable to those students.

XCIII. As amended, Section 2134 now provides in relevant part:

(A) No student returning from placement as a result of being adjudicated delinquent under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who has been adjudged to have committed a crime under an adult criminal proceeding shall be returned directly to the regular classroom.

(B) Prior to returning such student to the regular classroom, the school district shall:

(1) Place the student in a transition center operated by the school district for a period not to exceed four (4) weeks.

(2) Develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student and establishes terms and conditions the student must meet prior to returning to the regular classroom.

(C) The transition plan developed under subsection (b)(2) may provide for the student's direct return to a regular classroom where the underlying offense did not involve any of the following:

(i) Possession of a weapon.

(ii) Possession, use or sale of controlled substances as defined in the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(iii) Possession, use or sale of alcohol or tobacco by any person on school property.

(iv) An act of violence as defined in Section 1310-A(H).

(D) In the case of a student whose transition plan does not include immediate return to the regular classroom the student shall be placed in one of the following as provided for in the student's transition plan:

- (1) An alternative education program as defined in Article XIX-C.
- (2) A private alternative education institution as defined in Article XIX-E.
- (3) A general education development program.
- (4) A program operating after the traditional school day.

(E) (1) Prior to the release of a student subject to this section from a residential or day treatment placement as a result of being adjudicated delinquent under 42 PA. C. S. Ch. 63 (Relating to juvenile matters) or returning from incarceration as a result of having been adjudged to have committed a crime under an adult criminal proceeding, the court shall provide to the person designated in charge of the school district's transition center the information required in the school 1 notification provision under 42 Pa. C. S. § 6341(b.1) (relating to adjudication).

(2) The information shall be updated by the court with information pertaining to treatment reports and supervision plans or any other information deemed necessary by the transition plan and assure appropriate placement of the student.

XCIV. Section 2134 eliminates, for students seeking admission to regular Philadelphia public schools only, the requirement that a transfer to an alternative school for disruptive students be premised upon a finding, following a due process hearing, that the student has violated school rules.

XCIV. Section 2134 applies to no other schools or school districts in the Commonwealth, nor does it apply to any other delinquent youth on probation or returning from placement anywhere else in the Commonwealth.

XCIV. Section 2134 does not even apply to delinquent children who attend public charter schools located in Philadelphia – although, demographically, the population of students who attend these schools is comparable to the population attending schools operated by the Philadelphia School District.

XCIV. Section 2134 went far beyond the measures proposed by the School District's Task Force on Violence and by the School Reform Commission.

Consequences for Named and Class Plaintiffs

XCVIII. The School District is currently implementing Section 2134, in that all class members whose offenses are among those described in § 2134(C) are being automatically transferred to alternative schools for disruptive students or after-hours programs.

XCIX. On information and belief, with respect to those class members whose offenses are not among those described in § 2134(C), the School District:

- (a) Has adopted no standards on which to base its decision as to whether the student should be assigned to an alternative school for disruptive students or an after-hours program;
- (b) Does not require, as the basis for such an assignment, that the student be found to have violated school rules, or that he is a “disruptive” student;
- (c) Does not offer any due process hearing procedure to students seeking to challenge their assignment to an alternative school for disruptive students or an after-hours program.

C. As a result, named and class plaintiffs are being treated differently from all other students in the Commonwealth who, as the result of a delinquency adjudication or conviction, are returning from placement, in that:

- (a) Plaintiffs are not permitted to attend regular schools, but are instead being sent to a transition center for purposes of assessment;
- (b) Those plaintiffs whose offenses are among those enumerated in § 2134(C) are then being assigned to alternative programs for disruptive students or

to after-hours programs, without any hearing or determination that the student has violated school rules or is a disruptive student;

(c) Those plaintiffs whose offenses are not among those enumerated in § 2134(C) are also assigned to alternative programs for disruptive students or to after-hours programs – unless, in its absolute discretion, without reference to any standards, and without a hearing, the School District chooses to permit the student to return to regular school.

CI. These transfers and re-transfers of plaintiffs are interrupting, and disrupting, their educational programs.

CII. The transfers are stigmatizing to plaintiffs, in that plaintiffs are characterized as disruptive and dangerous students who pose a threat to the regular school environment, regardless of whether they are actually dangerous or disruptive. Plaintiffs are, moreover, suffering additional burdens despite having successfully completed the terms of their juvenile justice disposition.

CIII. Further, on information and belief, neither the transition centers nor the alternative schools or other programs to which plaintiffs are assigned offer educational opportunities that are comparable to those available to them in the District's regular schools.

CIV. For all of these reasons, plaintiffs are experiencing, and will in the future experience, irreparable harm.

CV. Plaintiffs have no adequate remedy at law.



## LEGAL CLAIMS

### Article III, Section 32 of the Pennsylvania Constitution

CVI. Article III, Section 32 of the Pennsylvania Constitution prohibits local or special legislation.

CVII. Section 2134 violates Article III, § 32 in that it denies to children who have been adjudicated delinquent, and who attend school districts of the first class, a right afforded to all other delinquent children in the Commonwealth, *i.e.*, the right to attend regular schools in the absence of a finding, following a due process hearing, that the student has violated school rules and that removal from regular school is warranted.

### The Equal Protection Clause of the Pennsylvania Constitution

CVIII. Article I, Section 26 of the Pennsylvania Constitution prohibits discrimination by the Commonwealth or any political subdivision against any person in the exercise of any civil right.

CIX. Section 2134 violates Article I, § 26, in that it denies to children who have been adjudicated delinquent, and who attend school districts of the first class, a right afforded to all other delinquent children in the Commonwealth, *i.e.*, the right to attend regular schools in the absence of a finding, following a due process hearing, that the student has violated school rules and that removal from regular school is warranted.

### Article I, Sections 1 and 11 of the Pennsylvania Constitution

CX. Article I, Sections 1 and 11 of the Pennsylvania Constitution, which make explicit reference to a person's interest in his or her reputation, provide that

reputation is a fundamental interest that cannot be abridged without compliance with constitutional standards of due process and equal protection.

CXI. Section 2134 violates Article I, §§ 1 and 11, in that it tarnishes plaintiffs' reputations by branding them as disruptive and dangerous students, regardless of whether they are in fact disruptive or dangerous; and without affording plaintiffs a fair opportunity to challenge this characterization.

The Due Process Clause of the Fourteenth Amendment  
to the United States Constitution

CXII. The Due Process Clause provides that no person shall be deprived of liberty or property without due process of law.

CXIII. Section 2134 stigmatizes plaintiffs and denies them the right to attend regular schools in violation of the Due Process Clause, in that:

- (a) As to those class members whose offenses are among those enumerated in § 2134(C), the statute establishes an irrebuttable presumption that the student is disruptive and unfit to attend regular school;
- (b) As to those class members whose offenses are not among those enumerated in § 2134(C), the statute gives the School District complete discretion, unconstrained by any standards or due process procedure, to determine whether to assign the student to an alternative school for disruptive students or an after-hours program.

RELIEF

WHEREFORE, plaintiffs request that this Court:

CXIV. Certify this case as a class action.

CXV. Enter a declaratory judgment and a permanent injunction declaring Section 2134 to be unconstitutional, and prohibiting its enforcement against plaintiffs and the plaintiff class.

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

CXVII. Award to plaintiffs their attorney's fees and costs.

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