

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

BRIAN B., by and through his :
mother, LOIS B.; ABDUL R., :
by and through his mother, :
DENA R.; BYRON A., by and through :
his mother, CARRIE W.; RONELLE W., :
by and through his mother, :
PAMELA J.; STEVEN S., by and :
through his guardian, NANCY F.; :
and JEREMIAH M., by and through :
his mother, SUSAN M.; on behalf :
of themselves and all others :
similarly situated, :

Plaintiffs, :

v. :

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF EDUCATION, EUGENE :
HICKOK, in his official capacity :
as Secretary of the Department :
of Education, GARNET VALLEY :
SCHOOL DISTRICT, PHILADELPHIA :
SCHOOL DISTRICT, and :
CENTRAL YORK SCHOOL DISTRICT, :

Defendants. :

CLASS ACTION

Civil Action No.

96cv-7991

COMPLAINT

INTRODUCTION

1. Plaintiffs bring this civil rights class action on behalf of themselves and all other school-aged youth statewide who are confined in Pennsylvania's county prison and jail system, to redress violations of their rights to basic and special education as guaranteed them by the United States Constitution, federal statutes and state law. Pennsylvania's county prisons and jails

generally house youthful and adult offenders charged with or convicted of crimes who are either awaiting trial, convicted and serving sentences of less than two years, or awaiting transfer to other facilities following their conviction.

2. Pursuant to federal and state law, all Pennsylvania school-aged youth, including those detained in county prisons and jails, are entitled to a free and full education, including special education and related services where appropriate, until age twenty-one (21) or graduation from high school, whichever comes first.

3. Despite these mandates, none of the named plaintiffs who are eligible for special education under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Secs. 1400 et seq., are receiving any special education and related services. The basic education received by named plaintiffs is likewise legally inadequate, ranging from no education at all, to minimal education consisting of only a few hours of instruction per week, to instruction for a GED (a high school equivalency degree) only. Named plaintiffs bring this action to assure that they, as well as all other present and future school-aged detainees of Pennsylvania's county prison and jail system, obtain the basic and special education services guaranteed them by law and required for their development as economically self-sufficient and socially responsible adults.

4. By denying special education or related services to eligible members of plaintiffs' class, and providing basic

educational services to other class members that are vastly inferior to what Defendants are required by law to provide, and in fact do provide, to other school-aged youth in Pennsylvania, Defendants are violating Plaintiffs' rights under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Secs. 1400 et seq.; Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. Sec. 794; the Fourteenth Amendment to the United States Constitution; and the Pennsylvania Public School Code of 1949, 24 Pa. Con. Stat. Ann. Secs. 1-101 et seq. Plaintiffs bring this action for declaratory and injunctive relief, and other appropriate relief under the federal and state laws set forth above.

5. The term "school-aged detainees" refers to all those individuals held in the Pennsylvania county prison and jail system who are twenty-one (21) years of age or younger, and have not received a high school degree.

6. Basic education services, as used in this Complaint, are those services that a local school district is required to provide to all Pennsylvania school-aged children residing within its geographical boundaries -- whether incarcerated in public institutions or living in their own homes -- under the Pennsylvania School Code, the Pennsylvania Constitution, and the Fourteenth Amendment to the United States Constitution.

7. Special education and related services, as used in this Complaint, are those services in addition to basic education, that, pursuant to IDEA and implementing regulations, meet the educational

needs of children who have a disability, which includes mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, brain injury, specific learning disabilities or other health impairments. 20 U.S.C. Sec. 1401(a)(1).

8. Defendants Pennsylvania State Department of Education, Eugene Hickok, Secretary of Education, Garnet Valley School District, Central York School District, and Philadelphia School District have violated plaintiffs' rights to appropriate basic and special educational services in the following ways:

a. Defendants deny the special education and related services required by plaintiffs who have previously been identified as needing such services, by failing to obtain and implement plaintiffs' special education programs as described in their Individual Education Plans ("IEPs"), and by failing to provide plaintiffs with certified special education teachers, programs, related services and the procedural protections required to meet federal standards for the provision of a free appropriate public education;

b. Defendants fail to locate, identify and evaluate those educationally disabled plaintiffs whose need for special education and related services has not been previously identified;

c. Defendants fail to provide a basic education program in conformity with the requirements of the Pennsylvania School Code, thereby denying to plaintiffs an education that is equal to

that made available to other children in Pennsylvania who are not detainees of the Pennsylvania county prison and jail system;

d. Defendants deny entirely education services to some members of plaintiffs' class.

JURISDICTION

9. Jurisdiction of this Court is proper under 28 U.S.C. Secs. 1331 and 1343, in that claims are asserted under the laws of the United States, including laws providing for the protection of civil rights; and under 20 U.S.C. Sec. 1415(e), in that claims are asserted under the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 et seq.

10. This Court has jurisdiction over plaintiffs' pendent state law claims against local Defendant School Districts pursuant to 28 U.S.C. Sec. 1367.

11. Plaintiffs' claims for injunctive and declaratory relief are authorized by 28 U.S.C. Secs. 2201 and 2202, 42 U.S.C. Sec. 1983 and the IDEA.

12. Venue is proper in this district pursuant to 28 U.S.C. Sec. 1391(b) because claims arose in this district, several named plaintiffs reside in this district, and at least one of the named defendants resides in this district. See 28 U.S.C. Sec. 1391(b)(1).

PARTIES

13. Plaintiff Brian B., born March 16, 1980, is a sixteen-year-old pretrial detainee at the Delaware County Prison. Brian has been detained since approximately September 17, 1996.

14. Brian was last enrolled in ninth grade at Chester High School in the Chester-Upland School District. The Chester-Upland School District had previously evaluated and identified Brian as learning disabled and in need of special education. For the 1996-97 school year, Brian was assigned to a remedial reading class and to learning support classes for science, social studies, English and math.

15. Since his confinement at the Delaware County Prison, Brian has only received four to five hours of instruction a week in English and math and has not received any special education services. The limited educational program provided to Brian does not meet his educational needs. Brian brings this action through his mother and next friend, Lois B.

16. Plaintiff Abdul R., born March 2, 1979, is a seventeen-year-old pretrial detainee at the Delaware County Prison. Abdul has been detained since approximately October 26, 1996.

17. Abdul was last enrolled in tenth grade at Chester High School in the Chester-Upland School District. Since his confinement at the Delaware County Prison, Abdul has received only a few hours of instruction in English and, on information and belief, has been virtually excluded from the limited educational

program offered to other youths at the prison. Abdul would like more education while detained at the prison. Abdul brings this action through his mother and next friend, Dena R.

18. Plaintiff Byron A., born October 18, 1979, is a seventeen-year-old pretrial detainee who has been confined at the Philadelphia House of Correction ("HOC"), a prison operated by the Philadelphia County Department of Corrections, since approximately May 30, 1996.

19. Byron was last enrolled in ninth grade at Thomas Edison High School in the Philadelphia School District. Byron had been previously evaluated and identified by the Philadelphia School District as socially and emotionally disturbed, and therefore eligible for special education and related services under the IDEA. He had been assigned to an "emotional support" special education classroom for the last several years and performs substantially below grade level in both reading and math.

20. In Byron's most recent IEP, applicable for the 1996-1997 school year, all of Byron's classwork was to take place in an emotional support classroom, with the exception of lunch and physical education. His IEP sets forth specific teaching strategies and objectives in such areas as reading, math and history, and provides for counselling and behavior management techniques.

21. Since his confinement at HOC, Byron has only been offered a few hours of instruction per week, which do not meet his education needs and are inconsistent with his IEP. On information

and belief, Byron's IEP has not been reviewed or implemented since his detention at HOC. Byron brings this action through his mother, and next friend, Carrie W.

22. Plaintiff Ronelle W., born December 14, 1978, is a seventeen-year-old pretrial detainee who has been detained at HOC since approximately March, 1996.

23. Ronelle was last enrolled in ninth grade at Bartram High School in the Philadelphia School District. Ronelle had been evaluated and identified by the Philadelphia School District as seriously emotionally disturbed, and was assigned to a "learning support" special education classroom.

24. Ronelle is currently performing at the third grade level in both reading and math. In his most recent IEP, applicable for the 1996-1997 school year, Ronelle's special education curriculum included adaptive English, math, science and social studies. The IEP provided for Ronelle's inclusion in regular education for lunch, advisory, assembly programs, health education, and physical education. The IEP set forth specifically designed instruction strategies, and included suggested instructional materials.

25. Since his confinement at HOC, Ronelle has had only limited opportunities to participate in the GED program, and the special educational program described in his IEP has not been provided to him. On information and belief, Ronelle's IEP has not been reviewed or implemented since his confinement at HOC. Ronelle brings this action through his mother and next friend, Pamela J.

26. Plaintiff Steven S., born May 10, 1981, is a fifteen-year-old pretrial detainee at the York County Prison. Steven has been detained awaiting trial since November 23, 1995.

27. Prior to his detention, Steven was last enrolled at George Junior Republic, a school in Grove City, Pennsylvania, where he was a special education student assigned to a part-time learning/emotional support class. Pursuant to Steven's most recent IEP, completed November 3, 1995, 62.5% of Steven's program was special education; 37.5 % of his program was regular education. Steven's Multi-Disciplinary Team Evaluation Report specifically noted that absent placement of Steven in the recommended special education program, his ability to function adequately in a regular education curriculum would be seriously compromised.

28. Steven would like to work towards a high school degree, but has been denied any education since his detention one year ago. Due to his age, Steven has been excluded from the limited GED program offered at the prison. Steven brings this action through his grandmother and guardian, Nancy F.

29. Plaintiff Jeremiah M., born December 6, 1978, is an eighteen-year-old pretrial detainee at the York County Prison. Jeremiah has been detained since August 19, 1996.

30. Jeremiah was last enrolled in tenth grade in the William Penn High School Alternative Program located in the York City School District. Jeremiah would like to work towards a high school degree, but has not been given any classes since his detention. Jeremiah has been scheduled, through the prison, to take the GED

exam in December 1996, although he has not received any instruction, books or other materials to assist him in preparing for the exam. Jeremiah brings this action through his mother and next friend, Susan M.

31. Defendant Pennsylvania Department of Education ("PDE") is an executive agency of the Commonwealth of Pennsylvania that oversees and supervises the Commonwealth's public education system, including basic and special education. 71 P.S. Sec. 352(a). It is also the "state education agency" within the meaning of the IDEA, 20 U.S.C. Sec. 1401(7), and receives federal funds thereunder; as such, PDE is responsible for assuring that all children with disabilities are identified, located, evaluated and provided with a free appropriate public education.

32. Defendant Eugene Hickok ("Hickok") is the Secretary of PDE and is responsible for, inter alia, ensuring that the requirements of IDEA are met in the Commonwealth and for ensuring that PDE properly oversees and supervises the public education system. Defendant Hickok is sued in his official capacity.

33. Defendants Garnet Valley School District, Central York School District, and Philadelphia School District ("Defendant School Districts") are public school districts established under Pennsylvania law. They are each a "local educational agency" as defined in the IDEA, 20 U.S.C. Sec. 1401(8), and receive federal funds. Defendant School Districts are responsible for providing basic and special education to all school-aged youth, including named plaintiffs, who reside in the geographical area which

comprises each school district, and who are detained in correctional facilities located within Defendant School Districts' boundaries. 24 P.S. 5-501, 13-1301, 13-1306. The Delaware County Prison is located in the Garnet Valley School District. The York County Prison is located in the Central York School District. The Philadelphia House of Correction is located in the Philadelphia School District.

CLASS ALLEGATIONS

34. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named plaintiffs bring this state-wide class action on their own behalf and on behalf of all other persons similarly situated. The plaintiff class consists of all school-aged youth detained at county prisons and jails throughout Pennsylvania who are, or will be in the future, entitled under state and federal law to free basic or special education services. Included in this class are detainees at county prisons and jails who, while twenty-one (21) years of age or younger, a) have been identified as requiring special education and related services, but are being denied a free appropriate public education; b) need special education and related services, but are being denied all such services because they have not been identified and evaluated by Defendants as needing such services; and c) are being denied the basic education services to which they would be entitled and assured access were they not detained at a county prison and jail.

35. The defined class is so numerous that joinder of all plaintiffs is impracticable. Upon information and belief, in September 1996 there were several hundred school-aged youth detained in county prisons and jails throughout the Commonwealth, pre-trial and post-trial. Upon information and belief, as many as forty percent of such school-aged detainees are disabled and in need of special education and related services.

36. There are questions of fact and law common to the class, and those questions predominate over all other questions affecting individual class members. All of the school-aged plaintiffs have either the same federal statutory right to be evaluated for, and, if eligible, to receive, special education services; or the same federal constitutionally protected right not to be arbitrarily denied their state statutory right to basic education services.

37. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs' claims arise from the same conduct -- the complete or partial denial of class members' rights to appropriate basic education or special education services to eligible detainees -- that gives rise to the absentee members' claims.

38. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the interests of the class; the plaintiffs and class members seek to assure the availability of, and access to, appropriate and equivalent special education and basic education services for all school-aged detainees confined throughout the Commonwealth's county

prison and jail system. Therefore, the relief that the named plaintiffs seek will benefit all members of the class.

39. By routinely denying appropriate and equivalent special and basic education services to members of the class, the Defendants have acted on grounds generally applicable to members of the class. As a result, declaratory and injunctive relief with respect to the entire class is appropriate. The plaintiffs' rights to special and basic education can best be addressed through one action on their behalf.

40. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Because of the continually changing composition of the school-aged population in the Pennsylvania county prisons and jails, a remedy for Defendants' ongoing violation of detainees' rights to special and basic education can only be obtained through class relief.

FACTS

41. There are 73 county prisons and jails in the Commonwealth of Pennsylvania.

42. The population of the county prisons and jails typically consists of the following: a) youthful offenders who, while under the age of eighteen (18), have been charged by the criminal court as adults as a result of being charged with one of the designated felonies set forth in Section 6302 of the Pennsylvania Juvenile Act, 42 Pa. C.S. §6302, and who are unable to post bail; b) youthful offenders who, while between the ages of fourteen (14) and

seventeen (17), were transferred to the criminal court for prosecution pursuant to Section 6355 of the Pennsylvania Juvenile Act, 42 Pa. C.S. §6355, and who are unable to post bail; c) adults over the age of eighteen who have been charged with criminal conduct, are awaiting trial, and are unable to post bail; d) youthful and adult offenders who have been convicted of criminal conduct and are awaiting sentencing and/or transfer to state facilities, and; e) convicted offenders, including some youthful offenders, who have been convicted of criminal conduct and sentenced to prison terms not to exceed two years.

43. On information and belief, the average length of stay at a Pennsylvania county prison and jail is three to six months for detainees awaiting trial. However, the length of detention can also be much longer. Named plaintiff Ronelle W. has been detained for close to nine months awaiting trial, and named plaintiff Steven S., who is only fifteen, has been detained for a year. As set forth in par. 42 above, for class members who are serving sentences in the county prison system following conviction, the length of confinement is up to two years.

44. On information and belief, there are several hundred school-aged detainees in the county prison and jail system statewide. On information and belief, a substantial number of these detainees have not yet received a high school diploma. On further information and belief, as many as forty percent (40%) of the school-aged population of the county prisons and jails either

are currently, or would be if properly evaluated, eligible for special education services.

Denial of Special Education

45. The IDEA, 20 U.S.C. Sec. 1400 et seq., requires states receiving funds under it to provide children with disabilities, between the ages of six (6) and twenty-one (21), with a free appropriate public education, consisting of an individually designed special education program and related services.

46. PDE, as the state educational agency under the IDEA, has the central responsibility for insuring the delivery of special education programs and services to children with disabilities. 20 U.S.C. Sec. 1412(6). Under the IDEA, PDE is required, inter alia:

a. to assure that all children in the state who are in need of special education are identified, located and evaluated, and to develop and implement a method to determine which children are not receiving needed special education and related services, 20 U.S.C. Sec. 1412(2)(C);

b. to provide special education and related services to students in need of such services if a school district is unwilling or unable to provide a free appropriate public education to an eligible student, 20 U.S.C. Sec. 1414(d);

c. to assure that local educational agencies, such as school districts, develop and implement for each eligible student, an Individualized Education Program ("IEP"), which describes the special education program and related services that a student

needs, and that the IEP for such student is reviewed and, if necessary, revised, 20 U.S.C. Sec. 1412(4); 34 C.F.R. Sec. 300.341(a);

d. to assure that there is an adequate supply of qualified special education and related services personnel, 20 U.S.C. Sec. 1413(a)(3)(A);

e. to assure that local educational agencies, such as school districts, provide written notice to the parents or guardians of children with disabilities, including eligible members of plaintiff class, informing them of the procedural safeguards that are applicable whenever a school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education, 20 U.S.C. Secs. 1412(5)(A), 1415; 34 C.F.R. Secs. 300.501, 300.504.

47. The local school district within whose boundaries a county prison or jail is located, such as Defendant School Districts herein, is responsible, as the local education agency under the IDEA, for the administration and direct provision of special education services for all students with disabilities within the district, including detainees of any county prison and jail within the district, until age twenty-one (21) or the successful completion of their secondary program.

48. Defendants PDE and Hickok are responsible for ensuring that the local school districts fulfill their statutory obligations, including, inter alia:

a. identifying and conducting a multidisciplinary evaluation of each student who may be in need of special education, 20 U.S.C. Sec. 1414(a)(1)(A), and re-evaluating every two years those students who have already been identified as in need of special education. 22 Pa. Code Sec. 14.25(n);

b. developing IEPs for all students with disabilities within thirty (30) days from the determination of a student's need for special education, and reviewing and revising the IEPs annually. 34 C.F.R. Sec. 300.343; 22 Pa. Code Sec. 14.32(i);

c. developing the IEP with a team of persons which includes, among others, the parents, the student, if appropriate, and a person who is qualified to provide or supervise the provision of special education. 34 C.F.R. Sec. 300.344(a);

d. before implementing any change in the educational program set forth in the IEP or the eligibility status of a student, giving prior written notice to the parents, and providing the parents an opportunity to disagree with the proposed change and request a due process hearing. 20 U.S.C. Sec. 1415; 22 Pa. Code Sec. 14.61.

49. Moreover, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, and its implementing regulations at 34 C.F.R. Part 104, likewise require the provision of a free appropriate public education to a qualified disabled student. 34 C.F.R. Sec. 104.33.

50. On information and belief, named plaintiffs Brian B., Byron A., Ronelle W. and Steven S., who have been previously

identified as in need of special education, have never received, and still do not receive, any special education services at the county prison and jail in which they are confined. On further information and belief, most of the eligible class members have not received any special education programming or related services while confined at a county prison and jail in the Commonwealth.

51. Further, on information and belief, Defendants PDE and Hickok have undertaken no efforts to ensure the identification, location and evaluation of educationally disabled youth among the school-aged population in the county prison and jail system statewide; have failed to provide special education or related services to those educationally disabled members of plaintiffs' class detained at county prisons and jails throughout the Commonwealth; and have no system in place for ensuring that local school districts comply with the requirements of IDEA with respect to eligible school-aged youth confined in the county prison and jail served by the local school district.

52. Defendant School Districts have also failed to meet their obligations under the IDEA by failing, inter alia:

a. to conduct multidisciplinary evaluations for all detainees with disabilities in the county prison and jail located in their district to determine their educational needs;

b. to develop and implement IEPs for all eligible detainees at the county prison and jail or obtain and implement existing IEPs for eligible detainees;

c. to identify, evaluate and assess detainees as they are admitted to the county prison and jail to determine eligibility for special education services;

d. to provide qualified special education teachers and related services personnel to guarantee that all detainees eligible for special education receive a free appropriate public education;

e. to provide eligible detainees with the appropriate related services; and

f. to provide eligible detainees and their parents written notice of their procedural safeguards prior to terminating their special education programs and services upon entering a county prison and jail.

53. Defendants PDE and Hickok have failed specifically to ensure that local school districts, including Defendant School Districts, within whose boundaries there is a county prison and jail, fulfill the obligations set forth above in paragraph par. 52(a)-(f).

54. Defendants have also failed to ensure that school-aged detainees are provided special education services which are comparable to the special education services Defendants provide to other similarly situated students who are not confined in the county prison and jail system.

55. Defendants' actions, omissions, policies, and practices complained of herein have denied plaintiffs a free appropriate public education required under the IDEA. As a result, plaintiffs

have suffered, and will continue to suffer, immediate and irreparable harm. Plaintiffs have no adequate remedy at law.

56. Plaintiffs are not required to exhaust administrative remedies before commencing this action where the relief requested, such as requiring PDE to establish a state-wide system which ensures that eligible school-aged students detained in county prisons and jails receive a free appropriate education and which identifies those students who may be in need of special education services, is not within the authority of an administrative hearing officer.

Denial of Basic Education

57. The Pennsylvania Constitution requires the state to maintain and support a thorough and efficient system of public education. Pa. Const. Art. III, Sec. 14.

58. PDE is specifically required to "administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools . . ." 71 P.S. Sec. 352.

59. Under Pennsylvania law, "all persons residing in [the] Commonwealth between the ages of 6 and 21 years are entitled to a free and full education . . ." 22 Pa. Code Sec. 12.1. Pennsylvania's compulsory school law also requires all students between the ages of eight (8) and seventeen (17) years to attend a school in which the subjects prescribed by the State Board of Education are taught. 24 P.S. Secs. 13-1326, 13-1327.

60. Pursuant to the State Board of Education's regulations, in order to graduate with a high school diploma, secondary school students must either complete twenty-one (21) credits including courses taught in English, math, science, social studies, arts or humanities; or must achieve specific learning outcomes in the areas of communications, mathematics, science and technology, environment and ecology, citizenship, arts and humanities, career education and work, wellness and fitness, home economics. 22 Pa. Code Secs. 5.202(f), 5.253(d)(2).

61. Pursuant to Pennsylvania law, school districts are required to provide free secondary education services, that conform to 22 Pa. Code Chapt. 5, to all students who are under age twenty-one (21), reside within their boundaries, and have not received a high school diploma. Under the Pennsylvania School Code, school districts are also required to provide secondary students with 5.5 hours of instruction a day or 990 hours per year. 24 P.S. Sec. 15-1504; 22 Pa. Code Sec. 11.3.

62. Upon information and belief, Pennsylvania's county prisons and jails do not provide basic education to school-aged detainees which conforms to the requirements of the Pennsylvania School Code as set forth above. Upon information and belief, school-aged detainees in the county prisons and jails do not receive instruction in the courses required by Chapter 5 of the School Code, and/or do not receive the mandated number of hours of instruction. Where local school districts do provide limited instruction, it is often towards earning a GED only.

63. On information and belief, the basic education provided school-aged detainees throughout the state ranges from no education program offered, to a few hours per week of instruction in math and reading only, to a few hours of instruction per week to prepare for a GED exam, to a daily GED program. For example:

a. On information and belief, school-aged detainees in York County Prison are given the "ABLE" (Adult Basic Learning Evaluation) assessment upon admission, and then offered either an adult basic education program for grade levels 5-8, or a GED program for grade levels 9-12. These programs are offered only to detainees sixteen years of age or older in the York County Prison. As a result, a detainee, such as named plaintiff Steven S., who is fifteen years old, has been excluded from this program and has not received any education for over one year. On information and belief, detainees who do participate in the program do not actually attend classes, but are permitted to meet with an instructor, in groups of no more than two inmates, two evenings per week, on a purely voluntary basis.

b. On information and belief, school-aged detainees under the age of eighteen in the Delaware County Prison receive four to five hours per week of instruction in math and English only. For school-aged detainees between the age of eighteen and twenty-one there is a limited GED program available.

c. On information and belief, Defendant Philadelphia School District provides school-aged detainees under the age of eighteen at the Philadelphia House of Correction daily instruction

in basic courses to prepare for the GED exam. Detainees are not grouped and taught according to grade or performance levels. Detainees are not offered any educational course other than a GED course. For school-aged detainees over the age of eighteen, there is a voluntary adult GED program; however, there is often a waiting list for this program resulting in the total exclusion of some detainees.

d. On information and belief, school-aged detainees in the Northampton County Prison receive six hours per week of basic education instruction or instruction towards a GED.

e. On information and belief, school-aged detainees in the Erie County Prison receive basic instruction towards a GED two times per week for two and one-half hours each session.

f. On information and belief, school-aged detainees under the age of eighteen in need of basic education in the Mercer County Prison currently receive a total of eight hours of instruction a week.

g. On information and belief, school-aged detainees seventeen years of age or younger in the Dauphin County Prison are offered five hours of instruction per week towards a GED, on a purely voluntary basis. School-aged detainees between the ages of eighteen and twenty-one are offered a GED class, ESL (English as a second language) class, ABE (adult basic education) class, or a life-skills program, also on a voluntary basis.

h. On information and belief, school-aged detainees under the age of seventeen in the Lancaster County Prison receive

a life-skills program on a voluntary basis. For school-aged detainees between the ages of eighteen and twenty-one, only a GED class and an adult literacy class are available.

64. On information and belief, the education programs provided by school districts to school-aged detainees lack the teachers, curriculum content, materials and resources necessary to provide such detainees educational services comparable to those Defendants provide to students who are not detainees. Moreover, upon information and belief, no county prison and jail provides detainees the opportunity to earn a high school diploma while in a county prison and jail.

65. State and local government has a critical interest in making an education available to all school-aged youth, including members of plaintiffs' class, and has no interest in denying educational services to otherwise eligible school-aged youth by virtue of their status as detainees. To the contrary, state and local government has at least an equivalent if not heightened interest in providing education to such youth because of education's critical importance in enabling such youth to become productive members of their communities and avoid future involvement in criminal activity.

66. Defendants have failed to implement any system for ensuring that school-aged detainees have available a uniform program of education which conforms with the Pennsylvania School Code. As result of Defendants' failure, plaintiff class members have been deprived of their right to basic education services.

67. Plaintiffs have suffered, and will continue to suffer immediate and irreparable harm as a result of Defendants' actions, omissions, policies and practices complained of herein. Plaintiffs have no adequate remedy at law.

CLAIMS

The Individuals With Disabilities Education Act

68. Paragraphs 1 - 67 are realleged and incorporated herein.

69. Pursuant to the IDEA, 20 U.S.C. Secs. 1400 et seq., and its implementing regulations, 34 C.F.R. Secs. 300 et seq., Defendants have a duty to assure the provision of appropriate educational services to all school-aged detainees with educational disabilities housed at county prisons and jails throughout the Commonwealth.

70. Defendants have violated and continue to violate plaintiffs' rights under the IDEA by, inter alia:

a. failing to provide plaintiff class members, who are in need of special education, a free and appropriate public education, in violation of 20 U.S.C. Secs. 1412(1) and 2(B), 1414(a)(6); 34 C.F.R. Secs. 300.121(a), 300.300(a);

b. failing to identify, locate and evaluate all detainees with disabilities who are in need of special education regardless of their severity, in violation of 20 U.S.C. Secs. 1412(2)(c), 1414(a)(1)(A); 34 C.F.R. Secs. 300.128(a)(1), 300.220;

c. failing to assure that local education agencies develop and implement an IEP for each detainee with a disability,

or maintain a system for the review and revision of such IEPs if necessary, in violation of 34 C.F.R. Sec. 300.341;

d. failing to assure that there is an adequate supply of qualified, prepared and trained special education and related services personnel, in violation of 20 U.S.C. Secs. 1413(a)(3)(A), 1414(a)(1)(C)(i);

e. failing to ensure that local education agencies adhere to the requisite procedural safeguards for school-aged disabled detainees and their parents or guardians, including providing prior written notice of proposed changes and the right to disagree and to resolve disagreements at an administrative hearing, in violation of 20 U.S.C. Secs. 1412(5)(A), 1414(a)(7), 1415, 34 C.F.R. Secs. 300.131, 300.501 - .506.

Section 504 of the Rehabilitation Act

71. Paragraphs 1 - 70 above are realleged and incorporated herein.

72. Pursuant to Section 504 of the Rehabilitation Act, and its implementing regulations at 34 C.F.R. Secs. 104 et seq., ("Section 504"), Defendants also have a duty to assure the provision of appropriate educational services to all school-aged detainees with educational disabilities housed in county prisons and jails.

73. Section 504 further provides, in pertinent part, that "[n]o otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his or her handicap, be

excluded from the participation in, be denied the benefits of, or be subjected to discrimination through any program or activity receiving federal financial assistance." 29 U.S.C. Sec. 794.

74. By failing to provide a free appropriate public education to qualified disabled detainees, Defendants have violated and continue to violate plaintiffs' rights under Section 504, and specifically, 34 C.F.R. Sec. 104.33(a).

75. By denying qualified disabled detainees the benefit of a full education, including special education, Defendants have violated and continue to violate Section 504, and specifically, 34 C.F.R. Sec. 104.4.

76. By failing to ensure that plaintiffs are provided the procedural safeguards required by Section 504, Defendants have violated and continue to violate 34 C.F.R. Sec. 104.36.

The Equal Protection and Due Process Clauses of the Fourteenth

Amendment to the United States Constitution

77. Paragraphs 1 - 76 above are realleged and incorporated herein.

78. Plaintiffs are guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution the right not to be deprived of special and/or basic educational services for arbitrary reasons or for reasons not rationally or substantially related to a valid state interest. Plaintiffs are further guaranteed under the Due Process Clause of the Fourteenth Amendment not to be deprived of basic or special

education without prior notice and the opportunity for a fair hearing; nor may plaintiffs be deprived, under the Due process Clause, of special and basic education services where such services are necessary for their attainment of the basic minimal skills necessary for the enjoyment of the right of speech, for full participation in the political process and for minimal economic self-sufficiency.

79. On information and belief, it is the policy of Defendants to comply with all of the statutory and regulatory requirements of the IDEA and Section 504 in regard to their provision of special education and related services to eligible students who are not detainees at the county prisons and jails, and to comply with the requirements of the Pennsylvania Constitution and the Pennsylvania School Code in providing basic education to eligible students who are not detainees at the county prisons and jails.

80. The failure of Defendants to provide plaintiffs with comparable basic education and special education and related services and procedural safeguards that Defendants provide persons similarly situated, except for their status as detainees, denies plaintiffs the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

81. Defendants' failure to provide, or assure the provision of, special education or basic education services to otherwise eligible detainees on an equal basis with the educational services that Defendants provide to other similarly situated eligible

students except that they are not detainees is not substantially or even rationally related to any valid governmental interest.

82. Defendants' denial of basic education and special education and related services to plaintiffs' class violates those plaintiffs' rights to substantive due process of law under the Fourteenth Amendment by putting them at an inordinate risk of intellectual deterioration, life-long illiteracy and economic dependency.

83. Defendants' denial of basic and special education services to plaintiff class members who do not possess the basic minimal skills necessary for the enjoyment and exercise of the rights of speech, for full participation in the political process and for minimal self-sufficiency further denies detainees of their rights to substantive due process under the Fourteenth Amendment.

84. As described above, Defendants have violated plaintiffs' rights under the Fourteenth Amendment, as enforced by 42 U.S.C. Sec. 1983.

State Law Claims Against Defendant School Districts

85. Paragraphs 1 - 84 above are realleged and incorporated herein.

86. Defendant School Districts' practice of providing minimal basic education, and in some instances, no basic education services at all, to plaintiff class members who are of school age and have not graduated from high school, violates their obligation to

provide basic education in accordance with the Pennsylvania School Code.

87. The School Districts have violated their duties under the Pennsylvania School Code by, inter alia:

a. failing to provide named plaintiffs and plaintiff class members, who are detained in county prisons and jails within their districts, with a free and full education to which they are entitled pursuant to 22 Pa. Code Sec. 12.1;

b. failing to provide a minimum of 5.5 hours of instruction a day or 27.5 hours per week, in violation of 24 P.S. 15-1504 and 22 Pa. Code 11.3;

c. failing to provide instruction in the curriculum content outlined in 22 Pa. Code Chapt. 5; and

d. failing to provide courses of study adapted to the age, development and needs of named plaintiffs and class members detained in county prisons and jails in their districts, in violation of 24 P.S. Sec. 15.1512

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction of this action.
2. That this court certify this as a class action under Fed. R. Civ. P. 23(b)(2).

3. That this Court issue a declaratory judgment that the Defendants' actions, omissions, policies and practices complained of herein violate rights guaranteed to members of the plaintiff class under the IDEA, 20 U.S.C. Sec. 1400 et seq., and its implementing regulations at 34 C.F.R. Sec. 300 et seq.; Section 504 and its implementing regulations at 34 C.F.R. Sec. 104 et seq.; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

4. That this Court issue a declaratory judgment that the Defendant School Districts' actions, omissions, policies and practices complained of herein violate statutory rights guaranteed to members of the plaintiff class under the Pennsylvania School Code.

5. That this Court issue a preliminary and then permanent injunction requiring Defendants to take all necessary measures to ensure that:

a. Named plaintiffs and class members immediately receive basic education services which are comparable to those received by non-detainee students and which conform to the Pennsylvania School Code;

b. Named plaintiffs and class members who are eligible for special education immediately receive special education and related services appropriate to their needs;

c. Defendants locate and identify all school-aged students in the county prisons and jails who have been previously identified as in need of special education and take steps to ensure that their IEP's are reviewed, updated, if necessary, and implemented;

d. Defendants locate, identify, and ensure the evaluation of all school-aged students detained in the county prisons and jails who have not been previously identified, but who may be in need of special education and related services;

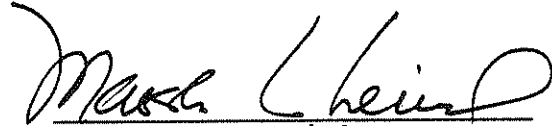
e. Defendants ensure that there is an adequate supply of qualified, prepared and trained special education and related services personnel in order to provide eligible school-aged detainees with a free appropriate public education;

f. Defendants take any and all other steps to comply fully with the federal and state laws violated herein.


6. That this Court award Plaintiffs appropriate compensatory educational services to remedy Plaintiffs' loss of special and basic education during their period of confinement at a county prison and jail.

7. That this Court award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper or equitable.

Respectfully submitted,



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