

PRELIMINARY STATEMENT

“This is a class action² brought by handicapped children on the grounds that defendants are depriving them of a free appropriate public education required by law. This deprivation has occurred through defendant’s failure to evaluate and place handicapped children in appropriate programs in a timely fashion. [The plaintiffs are asking the court to require the school system to] provide them... with the appropriate education required under the due process and equal protection clauses of the fourteenth amendment to the United States Constitution, the Education for all Handicapped Children Act, Public Law 94-142... [Section] 504 of the Rehabilitation Act of 1973, and New York Education Law Section 4401.”

...

PLAINTIFFS³

Plaintiff JOSE P.⁴ is fifteen-years-old and resides in New York, New York with his mother PASCUALA S.

Plaintiff MARK P. is six years old and resides in Bronx, New York with his mother ELAINE P.

Plaintiff MILTON C. is twelve years old and resides in Bronx, New York with his mother JACQUELINE C.

¹ A complaint is how a law suit begins. The lawyers for a group or an individual describe a harm that is happening to that group or individual them due to the actions of another group, individual, government, or corporation. Here the lawyers are representing a group of children and their parents, and they are describing the harm caused to them by New York education officials.

² A class action is a case that is brought on behalf of a large category or group of people who share a common problem or situation. For example, all of the customers of a given company can form a “class” in some cases. In this case, the “class” is all New York City children with disabilities. The people in a “class” do not have to go to court individually to be included in the results of the class action case.

³ These are the people who brought the case. Class actions identify some people to serve as “named plaintiffs,” or people whose individual stories will help the court understand the issues that the whole class faces. The people listed here are the named plaintiffs in this case.

⁴ Because the plaintiffs were children when the case was filed, their last names were not included to protect their privacy.

Plaintiff JOSEPH N. is eight years old and resides in Bronx, New York with his mother MARIA N.

Plaintiff STEVEN R. is thirteen years old and resides in Bronx, New York with his mother EDITH R.

Plaintiff DAVID R. is six years old and resides in Bronx, New York with his mother ANA AYALA R.

...

“Plaintiff’s class is composed of all handicapped children who, although they are entitled to a free appropriate public education, have not been promptly evaluated and placed in an appropriate program after defendants were notified in writing of the need for evaluation... The class consists of thousands of persons who are awaiting evaluation or placement.”

... “defendants’⁵ actions deprive plaintiffs and their class of rights secured in the “Education for All Handicapped Children Act, and the equal protection clause of the Fourteenth Amendment... defendants have failed to evaluate and place handicapped children in appropriate programs in a timely manner.”

DEFENDANTS

“Defendant GORDON AMBACH as Commissioner of Education of the State of New York...”

“Defendant Frank J. Macchiarola... is the Chancellor of the New York City Board of Education...”

[and the complaint names the President and all of the members of the New York City Board of Education].

[RELEVANT LAWS]

“each state ... which receives payment under the Handicapped Act” must “insure that a free appropriate public education is available to all previously identified handicapped children by September 1, 1978, and for all newly identified handicapped children promptly after their identification.”

...”the term ‘handicapped children’ includes children who are ‘mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed,

⁵ The defendants in the case are those accused of causing some harm. Here the defendants are people in decision-making positions in education in New York State and New York City.

orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or having specific learning disabilities, who because of these impairments need special education and related services.”

... “The regulations define a ‘free appropriate public education’ as special education and related services which are provided at public expense under public supervision and direction without charge, meet federal and state standards, include preschool, elementary school, and secondary education and are provided in conformity with an individualized education program.”

[Regulations related to the 1973 Vocational Rehabilitation Act also] “specifically prohibit discrimination in elementary and secondary education ... a recipient of federal financial assistance shall provide a free appropriate public education to each qualified handicapped child regardless of the nature or severity of the child’s handicap no later than September 1, 1978.

[And the New York State Constitution] “mandates that the legislature provide for maintenance and support of free schools for all children.” [New York Education Law] “requires the state and its subdivisions, including the Board of Education of the City of New York, to provide a free suitable special education for handicapped children aged five through twenty-one.”

... “Upon notification in writing by a child’s parent or guardian, by a professional staff member of [the school district], or by a licensed physician that there is reason to believe that a student may be handicapped and in need of special services, an evaluation must be made by the Board of Education within thirty days and placement in an appropriate class must be offered within thirty days of evaluation.”

FACTUAL ALLEGATIONS – NAMED PLAINTIFFS⁶

“Plaintiff JOSE P. is fifteen years old. He has been found by the Community Service Society Direction Center to be deaf mute and spastic⁷. ... JOSE has resided in New York City since July 1, 1978, after arriving from Puerto Rico. JOSE has never received any educational instruction.

The Board of Education of the City of New York ...was appropriately notified on or about October 27, 1978 of JOSE’s need for evaluation.

⁶ This section outlines the harms that have been done to the named plaintiffs because of the actions of the defendant – New York education officials. Put differently, this section describes the consequences of New York not respecting these disabled students’ rights.

⁷ This is an outdated term meant for a person who had one of several possible physical disabilities that may have involved muscle spasms. It is not acceptable for use today.

JOSE has not received an appointment for evaluation by the Board of Education, over a period of nearly three (3) months from notification.

JOSE P. is being severely injured and will continue to be severely injured until he is placed in a special education program. The treatment of his handicap becomes less possible as he grows older.

[The complaint then describes the other named plaintiffs, some of whom have been denied evaluation, several of whom are attending regular classes instead of the special education placements that their attorneys say they need].

“Despite the clear mandates of federal and state law, defendants have failed to provide thousands of handicapped children in New York City with an appropriate education. ... There are in excess of fourteen thousand students waiting for an evaluation and placement into appropriate programs in New York City. The average time from original notification to the Board of Education until placement in an appropriate program is approximately two hundred fifty calendar days or one hundred seventy working days, nearly an entire school year.

...

Because of their handicapping conditions, the members of plaintiff’s class are in particular need of appropriate education. Without it, their chances of becoming self-sustaining, productive individuals are reduced and their chances of becoming a burden to society are correspondingly increased. Delay in the provision of an appropriate education will increase the problems plaintiffs’ class members must deal with and make appropriate education less effective when they do receive it. Thus plaintiffs [and] class members are daily suffering irreparable injury as a result of the denial to them of the education they need.”

Signed by John C. Gray, Esq. and Harold Adler, Esq. of Brooklyn Legal Services.

February 1, 1979