

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GABRIEL RUIZ, by and through his mother ANA J. NOVA; LOUIS M. ABRAHAM; ABIGAIL BADILLO; JESSICA CABAN, by and through her mother CRUZ RAMOS; ND; DANIEL ESPINAL; MYLENE FIGUEROA, by and through her mother NANCY RIVERA; HAYDEE GARCIA; AG; ARENYA HARRIS; JESSENIA HERRERA, by and through her mother LEDY GONZALEZ; MIRYAN INDARTE; CARLOS INFANTE; CURT JAMES; YJ, by and through his mother ER; ABDIEL JULIO; AM; CHRISTINA MELENDEZ, by and through her mother LUCELINA TORRES; MICHAEL MONTES, by and through his mother SARA MINERO; CRYSTAL MORAN; FALLON NEGRON; NASONNA PIETERS; FRANCES D. RIVERA, by and through her mother DIANA RAMOS PINIERO; JAMAAR ST. HILLAIRE; VT, by and through her mother NM; and KW, on behalf of themselves and all others similarly situated,
Plaintiffs,

vs.

PAUL PEDOTA; NORMAN COHN, in his individual and official capacity as Principal of Franklin K. Lane High School; JOHN W. LEE, in his individual and official capacity as Superintendent of School District 77; JOEL KLEIN, in his individual and official capacity as Chancellor of the New York City School District; NEW YORK CITY DEPARTMENT OF EDUCATION; and NEW YORK CITY BOARD OF EDUCATION,
Defendants.

Civ. No.: 03-0502 (JBW)(ASC)

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
INJUNCTIVE, DECLARATORY
AND OTHER RELIEF**

PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief and compensatory and punitive damages based upon Defendants' illegal exclusion, expulsion and discharge

of high school students from Franklin K. Lane High School (“FKL”) in violation of the U.S. Constitution, Federal Law and New York State Law. Defendants have injured Plaintiffs by adopting a policy and engaging in practices that excludes them from school and denies them of their right to educational services afforded to them by New York State law.

2. The policy and practice complained of herein appears almost identical to a policy adopted at FKL almost 30 years ago, which also resulted in the wholesale expulsion of students. That policy was the subject of a similar lawsuit in the Eastern District of New York. See Knight v. Board of Education (Knight I), 48 F.R.D. 108 (E.D.N.Y. 1969); Knight v. Board of Education (Knight II), 48 F.R.D. 115 (E.D.N.Y. 1969). In Knight II, the Court issued an injunction directing the school to immediately re-enroll all members of the Plaintiff class. 48 F.R.D. at 117.

JURISDICTION

3. This Court has jurisdiction under 28 U.S.C. § 1331, in that claims are asserted under the laws of the United States; under 28 U.S.C. § 1343(a), in that claims are asserted under laws providing for the protection of civil rights; and under 42 U.S.C. § 1983. This Court has jurisdiction over Plaintiffs’ pendent state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. § 2201 and 2202.

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

5. If successful, Plaintiffs are entitled to costs and attorneys fees under 42 U.S.C. § 1988.

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

7. Plaintiffs are not required to exhaust administrative procedures because they are challenging policies and practices of general applicability that are contrary to numerous Federal and State laws, because Plaintiffs are threatened with irreparable harm, and because exhaustion of such remedies is futile and will not provide adequate relief.

PARTIES

8. Plaintiff Gabriel Ruiz is a 17-year-old student who was illegally discharged from the high school program at FKL in September 2002. As of February 2003, he has been attending FKL. He brings this action by his mother, Ana J. Nova.

9. Plaintiff Louis M. Abraham is 18 years old. He attended the high school program at FKL until September 2002.

10. Plaintiff Abigail Badillo is 18 years old. She attended the high school program at FKL until September 2002.

11. Plaintiff Jessica Caban is 17 years old. She attended the high school program at FKL until September 2002. She brings this action by and through her mother, Cruz Ramos.

12. Plaintiff ND is 18 years old. She attended the high school program at FKL until September 2002.

13. Plaintiff Daniel Espinal is 18 years old. He attended the high school program at FKL until February 2002.

14. Plaintiff Mylene Figueroa is 17 years old. She attended the high school program at FKL until May 2002. She brings this action by and through her mother, Nancy Rivera.

15. Plaintiff Haydee Garcia is 18 years old. She is an ELL student with a disability who attended the high school program at FKL until February 2002.

16. Plaintiff AG is a 22-year-old student with a disability who attended the high school program at FKL until February 2000.

17. Plaintiff Arenya Harris is 18 years old. She attended the high school program at FKL until May 2000.

18. Plaintiff Jessenia Herrera is 17 years old. She attended the high school program at FKL until Fall 2002. She brings this action by and through her mother, Ledy Gonzalez.

19. Plaintiff Miryan Indarte is 19 years old. She is an ELL student who attended the high school program at FKL until January 2002.

20. Plaintiff Carlos Infante is 20 years old. He attended the high school program at FKL until the middle of the 1999-2000 school year.

21. Plaintiff Curt James is 18 years old. He attended the high school program at FKL until January 2002.

22. Plaintiff YJ is 17 years old. He attended the high school program at FKL until October 2002. He brings this action by and through his mother, ER.

23. Plaintiff Abdiel Julio is a 19-year-old student with a disability who attended the high school program at FKL until June 1999.

24. Plaintiff AM is 19 years old. He attended the high school program at FKL until February 2000.

25. Plaintiff Michael Montes is 17 years old. He is a student with a disability who attended the high school program at FKL until September 2002. He brings this action by and through his mother, Sara Minero.

26. Plaintiff Christina Melendez is 17 years old. She attended the high school program at FKL until September 2000. She brings this action by and through her mother, Lucelina Torres.

27. Plaintiff Crystal Moran is 19 years old. She attended the high school program at FKL until she was 18 years old.

28. Plaintiff Fallon Negron is 19 years old. She last attended the high school program at FKL during the 1999-2000 school year.

29. Plaintiff Nasonna Pieters is 19 years old. She last attended the high school program at FKL during the 1999-2000 school year.

30. Plaintiff Frances D. Rivera is 17 years old. She attended the high school program at FKL until the Fall 2002. She brings this action by and through her mother, Diana Ramos Piniero.

31. Plaintiff Jamaar St. Hillaire is an 18-year-old student with a disability who attended the high school program at FKL until the middle of the 2001-2002 school year.

32. Plaintiff VT is 17 years old. She attended the high school program at FKL until Fall 2002. She brings this action by and through her mother, NM.

33. Plaintiff KW is 19 years old. He attended the high school program at FKL until January 2002.

34. Defendant The NEW YORK CITY BOARD OF EDUCATION (“Board of Education” or “Board”) was or continues to be the official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the City of New York. N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). The Board is a recipient of federal financial assistance.

35. Defendant The NEW YORK CITY DEPARTMENT OF EDUCATION (“Department of Education” or “Department”) is the newly formed official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the City of New York. N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). The Department is a recipient of federal financial assistance.

36. Defendant JOEL KLEIN is the Chancellor of the New York City School District (“Chancellor”) and as such is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-h (McKinney 1930), including the power and duty to control and operate all academic and vocational senior high schools in the city school district.

37. Defendant JOHN W. LEE is the Superintendent of City School District 77 (“Superintendent”) and as such is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-f (McKinney 1930), including the duty to evaluate the performance of principals for every school in the district with respect to educational effectiveness and school performance, including effectiveness of promoting student achievement.

38. Defendant NORMAN COHN is the Principal of FKL (“Principal”) and as such is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-i

(McKinney 1930), including the duty to promote an equal educational opportunity for students in the school.

39. Defendant PAUL PEDOTA is the former Principal of FKL (“former Principal”) and as such was entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-i (McKinney 1930), including the duty to promote an equal educational opportunity for students in the school.

**ENTITLEMENT TO INSTRUCTION AND INTERVENTION SERVICES
UNDER NEW YORK STATE LAW AND REGULATIONS**

40. New York State Education Law provides that any person over five and under 21 years of age, who lives in New York City and has not received a high school diploma, is entitled to attend a public school. N.Y. Educ. Law § 3202(1).

41. New York State Education Law also mandates full-time instruction for students until the age of 16, and allows certain jurisdictions to extend the age of required school attendance. N.Y. Educ. Law § 3202. New York City has opted to extend the compulsory school age to 17; the New York City Chancellor’s Regulation A-101 provides that all students who turn 17 after July 31st are required to attend school for the following school year under the compulsory education law.

42. The New York State Commissioner’s Regulations define “full-time instruction” to mean at least 5 ½ hours of instruction per day. 8 N.Y.C.R.R. § 175.5.

43. Academic standards for high school graduation were substantially revised by relatively new State and City policies and, upon information and belief, are now significantly more stringent than in previous years.

44. The New York State Commissioner’s Regulations require that each school district offer all students the opportunity to meet the requirements to receive a Regents

high school diploma. Students must have the opportunity to take Regents courses in grades 9 through 12 and, when appropriate, in grade eight. 8 N.Y.C.R.R. § 100.2(e).

45. In addition to affording students the right to attend school and receive instruction toward the Regents diploma, New York State law spells out a number of services to be provided to students if they are struggling academically, truant, or having behavior problems.

46. Students in grades 7 through 12 are supposed to receive Guidance Services, which should entail an annual review of their educational progress and career plans by school counselors (individually or in small groups) and instruction at each grade level about careers and career planning skills. In addition, students are entitled to advisory and individual or group counseling to enable them to benefit from the curriculum and help them develop and implement postsecondary education and career plans. Guidance services can also be used to assist students who exhibit any attendance, academic, behavioral or adjustment problems and to encourage parental involvement. 8 N.Y.C.R.R. § 100.2(j).

47. Students who are truant or struggling academically can also be provided Educationally Related Support Services (“ERSS”). These services may include counseling, speech and language improvement services, small group instruction, modified curricula, individualized tutoring and other such strategies that have demonstrated success. N.Y. Educ. Law § 3602(32); 8 N.Y.C.R.R. § 100.2(v).

48. Students in grades 9 through 12 are entitled to receive Academic Intervention Services (“AIS”). AIS are intended to assist students who are at risk of not achieving the State learning standards in English language arts, mathematics, social studies and/or

science, or who are at risk of not gaining the knowledge and skills needed to meet or exceed designated performance levels on State assessments. 8 N.Y.C.R.R. § 101.1(g).

49. English Language Learners (“ELL”) are entitled to be enrolled in a bilingual or English as a Second Language (“ESL”) program, and at a minimum, are required to receive ESL services. 8 N.Y.C.R.R. § 154. Title III of the No Child Left Behind Act as well as the New York State Commissioner’s Regulations require that ELLs be taught English and provided services that will help them meet State standards. 20 U.S.C. § 6801 et seq.; 8 N.Y.C.R.R. §§ 100.2(f), 154. ELLs that are potentially at-risk of not achieving State learning standards are further entitled to AIS under New York State Chancellor’s Regulations. 8 N.Y.C.R.R. § 100.2(ee).

PROTECTIONS FROM EXCLUSION, EXPULSION AND DISCHARGE UNDER FEDERAL, STATE & LOCAL LAW

50. The Due Process Clause of the 14th Amendment to the Constitution of the United States prohibits schools from expelling or suspending students from school without due process.

51. A student cannot be suspended or expelled from school unless he is disruptive or violent as defined by N.Y. Educ. Law §3214. Section 3214 sets forth due process protections that must be provided to students and parents before students are suspended or expelled from school, including written notice and an opportunity for a hearing and an appeal.

52. Neither truancy, poor grades, age, nor low academic performance are grounds for expulsion or suspension.

53. Section 3214 directs Defendants to develop a Code of Conduct that, among other things, sets out the conduct for which students can be subject to disciplinary proceedings.

54. Defendants have adopted Citywide Standards of Disciplinary and Intervention Measures (the Discipline Code) and New York City Chancellor's Regulation A-443, which contain the procedures and standards for student suspensions and expulsions. Some of these provisions were enacted to comply with the terms of a settlement of another federal case named BOE v. Board of Education, 80 Civ. 2829 (S.D.N.Y. 1982).

55. A school principal may initiate an involuntary school transfer where it is believed that a student would benefit from the transfer, or when the student would receive an adequate and appropriate education in another school program or facility. N.Y. Educ. Law § 3214(5).

56. The principal cannot initiate such a transfer until the student and a person in parental relation to the student has been sent written notification of the consideration of transfer recommendation. Such notice shall set a time and place of an informal conference with the principal and shall inform the student and person in parental relation of their right to be accompanied by counsel or an individual of their choice. N.Y. Educ. Law § 3214(5).

57. After the conference, if the principal concludes that the student would benefit from a transfer or that the student would receive an adequate and appropriate education in another school program or facility, the principal may issue a recommendation of transfer to the superintendent. Such recommendation shall include a description of behavior and/or academic problems indicative of the need for transfer and a description of

alternatives explored and prior action taken to resolve the problem. A copy of that letter shall be sent to the person in parental relation and to the student. N.Y. Educ. Law § 3214(5).

58. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the person in parental relation and the student of the proposed transfer and of their right to a fair hearing. Such hearing should include the right to subpoena evidence and cross-examine witnesses. The notice shall also list community agencies and free legal assistance that may be available. The written notice shall include a statement that the student or person in parental relation has ten days to request a hearing and that the proposed transfer shall not take effect, except upon written parental consent, until the ten day period has elapsed, or, if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later. N.Y. Educ. Law § 3214(5).

59. Parental consent to a transfer shall not constitute a waiver of the right to a fair hearing. N.Y. Educ. Law § 3214.

60. Under certain circumstances, schools are permitted to drop from enrollment a student over compulsory school age (between the ages of 18-21) if the student has been absent for 20 consecutive school days. N.Y. Educ. Law § 3202(1)(a). Before the student is dropped from the register, the following procedures must be followed:

- a. The principal or superintendent shall schedule and notify, in writing at the last known address, both the student and the person in parental relation of an informal conference. At the conference, the school administrator shall determine both the reasons for the absences and whether reasonable

changes in the student's educational program would encourage and facilitate his or her re-entry or continuance of study.

- b. The student and the person in parental relation shall be informed orally and in writing of the student's right to re-enroll at any time in the public school maintained in the district where he or she resides.
- c. If the student and the person in parental relation fail, after reasonable notice, to attend the informal conference, the student may be dropped from enrollment provided that the student and the person in parental relation are notified in writing of the right to re-enter at any time, if otherwise qualified under N.Y. Educ. Law § 3202.

61. The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400, et. seq., requires that all children with disabilities be provided a free appropriate public education. The IDEA also contains numerous procedural and substantive protections for children with disabilities and their parents. Those rights include mandated notice prior to a change in educational placement and the right not to be excluded from school for more than ten days in any school year.

CLASS ACTION ALLEGATIONS

62. Plaintiffs' claims for relief are brought on their own behalf and on behalf of all those similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure. Defendants have acted or refused to act on grounds generally applicable to the named and class Plaintiffs, making appropriate relief as to the class as a whole.

63. The class represented by the named Plaintiffs is comprised of all students who have been excluded, expelled or discharged from FKL for reasons of age, lack of

sufficient credits, failure to pass Regents' exams, poor grades, and/or truancy from January 2000 to the present and who were not afforded the procedural and substantive protections of federal, state and local law.

64. The class is so numerous that joinder of all members is impractical.

65. There are questions of law and fact in common between the named Plaintiffs and the members of the class they seek to represent, *e.g.*, whether Defendants have expelled, excluded or discharged students from the high school program at FKL in violation of law.

66. The claims of the named Plaintiffs are similar to those of the class they seek to represent. For example, the named Plaintiffs, like the other members of the class, maintain that Defendants violated the law by illegally expelling, excluding or discharging them from the high school program at FKL in violation of the rights afforded them under federal, state and local law, and by denying them of their right to educational services. Accordingly, the claims of the named Plaintiffs are typical of those of the class.

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

FACTUAL ALLEGATIONS OF THE NAMED PLAINTIFFS

68. Gabriel is a 17-year-old student who started attending FKL in September 1999. Gabriel repeated the 9th grade during 2000-2001 school year. By the end of the 2001-2002 school year, Gabriel had accumulated 19 credits. Gabriel has been classified as an ELL student and has taken bilingual and ESL courses throughout his attendance at FKL.

69. When Gabriel returned to FKL in September 2002 at the age of 16, he was informed by Ms. Dixon, his guidance counselor, that he did not have enough credits to stay in school and that he had to go to a GED program.

70. A few days after Gabriel was discharged, Gabriel and his mother, Ana Nova, attended a meeting at which Ms. Dixon and Ms. Estevez, another school guidance counselor, were present. At the meeting, Ms. Dixon stated that Gabriel could no longer attend FKL because he did not have enough credits to stay in school and that he had to go to a GED program. Either Ms. Dixon or Ms. Estevez gave Gabriel a list of GED programs or comprehensive schools that he could attend. Gabriel and his mother both informed Ms. Dixon and Ms. Estevez that Gabriel did not want to go to a GED program and that he and his mother wanted him to obtain a Regents diploma.

71. According to Gabriel, Ms. Estevez then told Gabriel in English that the State could not pay for his studies anymore and that the State could not and would not waste any more money on his education. At no time did Ms. Dixon or Ms. Estevez inform Gabriel or Ms. Nova that Gabriel had the right to stay in school until he was 21.

72. Upon information and belief, the school did not officially “discharge” Gabriel from their register, as he was still of compulsory school age. Instead, they kept him on the register marked as Long Term Absent (“LTA”).

73. In November 2002, a person from FKL contacted Gabriel to tell him that he needed to return to the school to attend their in-house GED program. Gabriel told them again that he did not want to attend a GED program and that he wanted to return to the Regents program at the high school. The school again refused to let him return to the high school program.

74. Gabriel spent over four months out of school. Gabriel has lost valuable time in his education because the school would not allow him to attend.

75. On January 30, 2003, AFC filed a lawsuit on behalf of Gabriel against Defendants, who agreed to return Gabriel to school the following day. However, when he returned, Gabriel was kept in a room in the basement, reading the newspaper instead of being returned to class. On February 4, 2003, Gabriel was finally re-enrolled in his regular classes.

76. Since AFC filed the initial lawsuit, Gabriel was again barred from returning to school for two weeks, allegedly due to a problem with his vaccinations. Counsel for Plaintiff was not informed of this exclusion. During this time, however, Gabriel was still permitted to attend his night school class.

77. Plaintiff Louis M. Abraham is 18 years old. He was discharged from the high school program at FKL in violation of law in September 2002 at the age of 18. Louis was a special education student with an Individualized Education Program ("IEP") classifying him as Learning Disabled. When Louis arrived at the school in September 2002, a school official informed him that he should get an IEP diploma. Louis and his mother then had a meeting with school officials, during which Louis and his mother expressed Louis' desire to earn a local diploma. However, Louis was informed that he should get his IEP diploma or a GED and that he was merely wasting the school's time by staying at FKL. Louis was not transferred to another school. He attempted to enroll in another school but was not admitted. He wants to attend another high school program and earn his local diploma.

78. Plaintiff Abigail Badillo is 18 years old. She was discharged from the high school program at FKL in violation of law in September 2002 at the age of 17. In October 2001, Abigail transferred to FKL from Environmental Studies High School after the events of September 11, 2001, because she was experiencing depression. She attended FKL for the remainder of the 2001-2002 school year. In September 2002, when Abigail attempted to pick up her program card at the school, she was informed that she could not do so. She then spoke to her guidance counselor, Mr. Dutes, who directed her to speak with Ms. Estevez. Ms. Estevez informed Abigail, her mother and her brother that Abigail could not remain at FKL because she was 17 years old and therefore too old to be in high school. Abigail, her mother and her brother all informed Ms. Estevez that Abigail wanted to stay in the high school program. Ms. Estevez again stated that Abigail was not allowed to remain in school because she was 17. Ms. Estevez did not refer her to any specific programs, but rather told her to “take the GED or something.” Abigail currently has approximately 11 credits and would like to attend another regular high school program and earn her Regents diploma.

79. Plaintiff Jessica Caban is 17 years old. She was discharged from the high school program at FKL in violation of law in September 2002 at the age of 17. Until January 2001, Jessica was classified as an ELL student. At the end of the 2001-2002 school year, Jessica was referred to summer school for the summer of 2002. Because FKL did not provide a summer school program for 10th graders, Jessica asked Ms. Estevez if she could attend summer school at another location. Ms. Estevez said that she could not, and Jessica was not allowed to attend summer school even though she required it. In September 2002, Jessica went to FKL to pick up her program card. The card stated

“GED.” Jessica and her mother spoke with Ms. Estevez and informed her that Jessica did not want to attend a GED program. Ms. Estevez told Jessica and her mother that Jessica had no choice but to do so, and directed her to FKL’s GED program. Jessica then placed her name on the waiting list at Satellite Academy. She again approached Ms. Estevez to tell her that she did not want to go to the GED program, and Ms. Estevez told Jessica that the only way she could remain at FKL was to attend FKL’s GED program. Since September 2002, Jessica has been attending the GED program at FKL. She currently has 14 credits. She would like to enroll in another regular high school program and earn her Regents diploma.

80. Plaintiff ND is 18 years old. She was discharged from the high school program at FKL in September 2002. At the time of her discharge, she had approximately 32 credits. When she reported to school in September 2002, she asked a representative at FKL about a rumor she had heard from a friend who had been told to go to a GED program when she obtained her program card. The FKL representative told ND that the rumor was true, and that her only options were to go to a GED program or attend an outreach center. Based on that incorrect information, ND signed discharge papers. During her time at FKL, ND struggled with math and was never provided help despite her mother’s requests for extra assistance. ND is currently attending Lower Manhattan Outreach Center, which she located on her own, and is trying to obtain a Regents diploma. In the past week, ND’s mother received calls from DOE representatives, informing her that officials would be conducting meetings at FKL during a two-week period. They informed her that if she was interested in attending a GED program, she could come in to speak with someone about this option. When her mother told the

representative that her daughter was not interested in the GED, she was not told that she had the option to attend a high school diploma-granting program.

81. Plaintiff Daniel Espinal is 18 years old. He was discharged from the high school program at FKL in February 2002. In February 2002, Daniel attempted to pick up his program card for the new semester of classes. At this time, Mr. Becker, his guidance counselor, informed him that he was too old to stay in school. Daniel continued to return to the school each day for the following two weeks, hoping that he would be provided with a program card and allowed to resume attending classes. He even brought his father to school to request that he be allowed to remain in the school. However, Daniel was not permitted to return to classes. Eventually, his father agreed to sign a paper discharging him from the program, because he felt as though he had no other choice. Once he was discharged from FKL, Daniel was unable to find a job because he did not have a high school diploma and could not find a school that would accept him because he was 18 years old. Eventually, in February 2003, after he was out of school for a year, Daniel enrolled in an outreach center.

82. Plaintiff Mylene Figueroa is 17 years old. She was discharged from the high school program at FKL in violation of law in May of 2002. In May 2002, she received a letter stating she was discharged from FKL and had to attend a GED program. When she and her mother spoke with her guidance counselor, they were told that Mylene was not allowed to attend the high school program. The guidance counselor then attempted to enroll Mylene in the pre-GED program at FKL. Mylene informed her guidance counselor that she had previously attended and passed that program. The guidance counselor then told her there was nothing else they could do and that she needed to leave

the school and attend a GED program or “something else.” Mylene has approximately 10 credits and has never been offered any Regents classes at FKL despite her constant inquiries and requests. Mylene wants to return to a regular high school program and earn her Regents’ diploma.

83. Plaintiff Haydee Garcia is 18 years old. She was discharged from the high school program at FKL in violation of law in February 2002 at the age of 17. She was classified as an ELL student and received special education services. Her special education classification was Learning Disabled. Haydee became pregnant while she was at FKL. She told guidance staff that she was having trouble getting to class because the elevator was broken. In February 2002, at the age of 17, she was told to go to a GED program. Haydee’s mother, Yolanda Maldonado, signed a paper agreeing to the discharge because Ms. Hand, Haydee’s guidance counselor, said Haydee had no other choice but to go to a GED program because of low credits. Ms. Maldonado told the guidance counselor that her daughter had a legal right to stay in school until the age of 21, but the guidance counselor responded that Haydee only had a right to stay until she was 18. Haydee tried to enroll in another of Defendant’s schools but was not accepted. She has been out of school for more than one year. She wants to attend another regular high school program and earn her diploma.

84. Plaintiff AG is 22 years old. AG was discharged from the high school program at FKL in violation of law in February 2000 at the age of 18. He was a special education student classified as Emotionally Disturbed. He has been out of school since February 2000 and believes he has approximately 16 credits. AG wants to attend another high school and earn his diploma.

85. Plaintiff Arenya Harris is 18 years old. She was discharged from the high school program at FKL in violation of law in May 2000 at the age of 15. In May 2000, she and her mother were informed by her guidance counselor, Mr. Menahan, that she did not have enough credits to stay in school. They were also told that it would be a waste of Arenya's time to stay in school and that she had to enroll in a GED program. Arenya and her mother asked the guidance counselor if there was anything else the school could do for her because she really wanted to stay in school and earn a Regents diploma. Mr. Menahan informed her that there was no possibility of her being allowed to remain in the high school program. Since her discharge from FKL at the age of 15, Arenya has attended the FKL GED program and Jamaica Learning Center. She would like to attend another high school and earn her Regents diploma.

86. Plaintiff Jessenia Herrera is 17 years old. She was discharged from the high school program at FKL in violation of law in Fall 2002 at the age of 17. In November 2001, Jessenia informed the school that she wanted to take the GED and attended the FKL GED program. The GED program was not challenging for Jessenia, and she therefore attempted to return to the high school program at FKL in Fall 2002. At that time, Ms. Estevez refused to let her attend the high school program and informed her that it was due to her being 17 years old. Since her discharge, Jessenia has wanted to return to the high school program at FKL. As of March 24, 2003, she has been re-enrolled in and attending FKL.

87. Plaintiff Miryan Indarte is 19 years old. She was discharged from the high school program at FKL in violation of law in January 2002. At the time she had 49 credits and had passed every high school Regents exam except for the English Regents.

A guidance counselor from FKL told her that she either had to go to a GED program or sign up for classes she already passed. Miryan tried to enroll in another of Defendants' schools, but the school refused to enroll her because she had already earned all of her credits. She wants to return to the regular high school program at FKL and have the chance to take the English Regents and earn her Regents diploma.

88. Plaintiff Carlos Infante is 20 years old. He was discharged from the high school program at FKL in violation of law during the 1999-2000 school year. A guidance counselor at FKL told Carlos in the Fall of that school year that he had to go to a GED program. He believes he had approximately 17 credits at the time he was discharged. Carlos would like to return to another high school and earn his Regents diploma.

89. Plaintiff Curt James is 18 years old. He was discharged from the high school program at FKL in violation of law in January 2002 at the age of 17. Mr. Dutes, a guidance counselor at FKL, informed Curt that he had to attend a GED program. Curt believes he had approximately 26 credits at the time he was discharged. He has been attending a GED program since May 2002.

90. Plaintiff Abdiel Julio is 19 years old. He was discharged from the high school program at FKL in violation of law in June 1999. Abdiel was a special education student with an IEP classifying him as Learning Disabled. A guidance counselor at FKL told Abdiel and his mother that Abdiel had to attend a GED program and could not return to FKL. He attended a GED program for one year, but did not receive services for his learning disabilities. Abdiel wants to attend another high school and earn his diploma.

91. Plaintiff YJ is 17 years old. He was discharged from the high school program at FKL in violation of law in October 2002. YJ was told by FKL officials that he was too old, that he didn't have enough credits, that he wouldn't be able to pass his Regents exams, and that he had to go to a GED program. YJ wants to return to a high school program and earn his diploma.

92. Plaintiff AM is 19 years old. He was discharged from the high school program at FKL in violation of law in or about February or March 2000 at the age of 16. He attempted to enroll at another of Defendants' schools but was denied enrollment. He would like to return to a high school program and earn a Regents diploma.

93. Plaintiff Michael Montes is 17 years old. He was discharged from the high school program at FKL in violation of law in September 2002. Michael is a special education student whose IEP requires resource room services. In September 2002, FKL staff told his mother that she had to come to the school with Michael because his program card stated "GED." Michael and his mother spoke to Michael's guidance counselor, Mr. Becker, who informed them that Michael could not come to school anymore because he had to go to a GED program. Mr. Becker informed Michael's mother that Michael would be transferred to another program. When Michael's mother asked Mr. Becker why this was happening, he responded that Michael did not have enough credits to graduate and because he would be 18 years old the following year. Michael's mother asked Mr. Becker for additional services that would allow her son to stay at FKL and meet the graduation requirements. Mr. Becker refused to offer these services; rather, he informed Michael's mother that all students who did not have enough credits had to leave FKL. Mr. Becker then filled out an application for Michael to go to a GED program, claiming

that it was the fastest and easiest way for him to move on. Michael's mother said that Michael was not 21 years old yet and therefore was not too old to be in school; Mr. Becker still refused to allow Michael to remain in the high school program at FKL. Michael would like to return to high school and earn his diploma. He would also like to receive additional services to help him make up the time that he missed in school due to his improper discharge.

94. Plaintiff Christina Melendez is 17 years old. She was discharged from the high school program at FKL in violation of law in September 2000. When she arrived at school in September 2000, Christina was automatically transferred into the GED program. When her mother, Lucelina Torres went to the school to find out why Christina was transferred, a guidance counselor told her that all students who were not doing well and cutting class had to go to a GED program. Because Ms. Torres felt that she had no choice, she discharged her daughter. FKL representatives told her to try to look into outreach programs; Ms. Torres mother tried but was not able to get her admitted. After the first complaint in this action was filed, Ms. Torres arranged a meeting with the principal and assistant principal of FKL to discuss returning to school. When she arrived at the school for the meeting, neither the principal nor the assistant principal were available to meet with her. Instead, she spoke with Mr. Becker, a guidance counselor, who told her that her daughter's only choice was to return to FKL or to go to a GED or Job Corps program. He had Ms. Torres sign a document stating that Christina did not want to return to FKL. Mr. Becker gave Christina's mother information about Job Corps and advised her to call back to obtain information about GED programs. Christina has

approximately 13 credits. Christina would like to attend another high school, and does not want to return to FKL in light of what happened there.

95. Plaintiff Crystal Moran is 19 years old. She was discharged from the high school program at FKL in violation of law at the age of 18. Her guidance counselor informed Crystal that she did not have enough credits to stay in school. Her guidance counselor told her that she was going to be 19 years old soon and the school had to make room for other students who were entering the school with higher grades. The guidance counselor further informed Crystal that even if she stayed in high school, she would not be able to graduate. Crystal and her mother pleaded with the guidance counselor, but the guidance counselor refused to allow Crystal to remain at FKL. Crystal has approximately 20 credits. Crystal had been attending a GED program at Lynden Learning Center. She wants to return to another regular high school program and earn her Regents diploma.

96. Plaintiff Fallon Negrón is 19 years old. She was discharged from the high school program at FKL in violation of law in 2000 at the age of 16. Fallon attended FKL for two and one half years. During that time, she struggled with academics and attendance. In the middle of her third year, she was told to go to a GED program. During a meeting with FKL representatives, Fallon and her mother told the FKL staff that Fallon wanted to stay at FKL, but FKL representatives gave them the impression that she had no choice but to leave. Fallon would like to return to FKL and earn her Regents diploma.

97. Plaintiff Nasonna Pieters is 19 years old. She was discharged from the high school program at FKL in violation of law in 2000. She was approximately 15 or 16 years old at the time. In the middle of the school year in 2000, Nasonna's mother

received a letter from FKL regarding a GED program for Nasonna. Nasonna and her mother spoke with the guidance counselor, who, despite their pleading that Nasonna wanted to stay in the regular high school program, gave them the impression that Nasonna's only option was to attend a GED program. Nasonna currently has 8 credits and has not been attending school since 2000.

98. Plaintiff Frances D. Rivera is 17 years old. She was discharged from the high school program at FKL on two separate occasions. The first time she was discharged she was 15 years old. Her mother, Diana Ramos Pineiro, wrote a letter to the principal asking for her to be readmitted. Frances was then placed in a self-contained program at FKL, where she began to experience some academic success. The next semester, however, she was placed back into her prior program at FKL and started falling behind again. Frances and her mother then had a meeting with an assistant principal, who told them that that the school could not meet Frances' needs and that she had to go to a GED program. Her mother asked for extra assistance for Frances, but the assistant principal refused. Instead, Ms. Pineiro was given addresses of GED programs. The school did not make any arrangements for Frances to be enrolled in another program. Frances does not want to return to FKL because of the demoralizing experience she had there, although she wants to earn her diploma. Frances would like to receive additional services and counseling support to help her succeed in high school.

99. Plaintiff Jamaar St. Hillaire is 18 years old. He was discharged from the high school program at FKL in violation of law during the 2001-2002 school year at the age of 17. Jamaar has asthma and a physical disability that makes it difficult for him to walk up and down staircases. In the middle of the 2001-2002 school year, his guidance counselor

told him he was not doing well and had to leave the FKL high school program to go to a GED program. The elevator was broken for months, and because of his disability, Jamaar was having trouble making it up the stairs to his classes. Ms. Estevez sent home documents for him to go to the GED program at Jamaica Learning Center. Currently, his mother is investigating Job Corps.

100. Plaintiff VT is 17 years old. She was discharged from the high school program at FKL in violation of law in September 2002. When VT showed up at school in September 2002, her program card stated that she was to attend a GED program. VT's guidance counselor told her that she had "aged out" of the high school program and had to go to a GED program. Furthermore, VT and her father were told that VT could not enroll in FKL's GED program. VT and her father believed that they had no choice but to sign her out of school. Her family is still receiving notices about her absences, so they are not sure whether she was formally discharged. In March 2003, NM, VT's mother, received a notice stating that NM was at risk of being reported for educational neglect because VT had missed many days of school. The letter was sent by Ms. Feivelson and Mr. S. Galazin of FKL. VT wants to return to another high school and earn her Regents diploma.

101. Plaintiff KW is 19 years old. He was discharged from the high school program at FKL in violation of law in January 2002. That month, KW's guidance counselor told him that he was too old to remain in school, that it was time for him to leave the school and that he should attend a GED program. At this time, KW had over 40 credits and had passed the English, Biology and US History Regents. At this meeting in January 2002, he was informed that he needed only one math credit and one art credit,

along with 2 additional Regents, to obtain his Regents diploma. Prior to this meeting, KW was unaware that he was missing any credits. KW wanted to stay at FKL to obtain his diploma, but the school would not allow him to stay. KW is currently attending a GED program offered through his mother's union on Saturdays.

102. None of the named Plaintiffs who left FKL, or their parents, believed that they had a choice to stay in the regular high school program at FKL.

103. None of the named Plaintiffs received a hearing or an offer for a hearing before being excluded from the regular high school program at FKL.

104. None of the named Plaintiffs were provided sufficient AIS, ERSS or guidance services prior to being excluded from the high school program at FKL.

105. None of the named Plaintiffs were provided legally sufficient notice prior to being discharged or excluded from the regular high school program at FKL.

106. Named plaintiffs that attend or attended the FKL GED program were not provided appropriate educational services under Federal or State law.

107. None of the named Plaintiffs with disabilities were afforded the substantive or procedural protections of the IDEA, Section 504, or New York State Education law.

FURTHER ALLEGATIONS

108. Approximately 30 years ago, a group of students sued FKL based upon application of a policy that was alleged to have resulted in the wholesale dismissal of approximately 600 students. It was alleged that this policy was adopted to relieve overcrowding in the school. In Knight II, this Court ruled that members of the Plaintiff class were denied their constitutional right to due process under the Fourteenth

Amendment of the U.S. Constitution and issued an injunction ordering Defendants to re-enroll all members of the Plaintiff class. 48 F.R.D. at 117.

109. Upon information and belief, Defendants have continued to adopt the same or a similar policy as that alleged in the Knight complaint.

110. Since the court issued its decision in 1969, Defendants have been on notice that a policy of expelling and excluding students from school would violate students' constitutional rights. Since that time, state laws and local regulations were enacted that clearly outline students' due process rights and substantive educational entitlements under state law. The rights of students to stay in school and pursue a regular high school diploma are clearly established; yet, Defendants have disregarded these rights.

111. Defendants have been repeatedly made aware of the problem of students being forced to leave school or attend GED programs. In November, a report co-authored by Advocates for Children described what appeared to be a growing problem of school discharges. Moreover, in a Daily News Article published on November 9, 2002 entitled "Shocker of Booted Students" that discussed this report, a Department of Education spokesperson was quoted as saying that high schools are not illegally discharging or excluding students.

112. Moreover, the policy report was sent directly to certain Defendants; there has been no formal response to counsel for Plaintiffs.

113. Upon information and belief, based upon reports from students and professionals across the city, many students are being wrongfully "counseled-out" of the system and are signing "voluntary discharge" forms because they are being provided

incorrect information about their rights to attend school. Many of these students are being told to go to GED programs.

114. Upon information and belief, the GED is not an equivalent alternative to a high school diploma. GED recipients do not fare as well as high school graduates in the labor market and in post secondary education. Compared to high school graduates, students with GEDs earn less and are more likely to depend on public assistance or be unemployed. Males who have high school degrees but no college degrees earn 14 to 23% more than male GED recipients. Furthermore, although over 95 percent of all academic institutions of higher learning accept GED recipients as students, the percentage of these recipients who finish post-secondary education is far lower than those with high school diplomas. Only 2% of GED holders obtain a four-year college degree.

115. Defendants' website contains documents called "school profiles" for the school years 2000-2001, 1999-2000 and 1998-1999. Those profiles contain information about the number of students who are discharged from each school each year. Those profiles reveal that among high schools in the Queens superintendency, FKL is tied with Springfield Gardens for the highest rate of discharging students.

116. The profiles indicate that FKL discharged 959 students in 2000-2001 (approximately 28% of students enrolled). The school also discharged 1021 students in 1999-2000 and 928 students in 1999-1998. These reports do not break down the reasons for discharges.

117. These discharge figures are very high in comparison to the discharge rates for other high schools in the Queens superintendency. For example, in the 2000-2001 school year, the following Queens high schools had significantly lower rates: Townsend

Harris High School discharged 15 students (1.5% of the students enrolled); Thomas Edison High School discharged 159 students (8% of the students enrolled); and Cardozo High School, which has a higher enrollment than FKL, discharged 364 students (9% of the students enrolled).

118. Defendants have not publicly released school profiles for the 2001-2002 or 2002-2003 school years. However, upon information and belief, the trend of continuing to discharge large numbers of students has continued.

119. Upon information and belief, some of the discharges were not illegal and were made because students moved out of New York City, transferred to other diploma-granting schools or dropped out voluntarily. Some of the discharged students, however, are class members.

120. Plaintiff Ruiz originally filed this complaint on behalf of himself and others similarly situated on January 30, 2003.

121. After the complaint was filed, Defendants produced a document that purported to reflect the discharge data from FKL from the 2000-2001, 2001-2002 and the 2002-2003 school years. The discharge numbers were broken down by Discharge Code. For the current year, 896 students had been discharged as of the time the report was generated. In the 2001-2002 school year, 1594 students were discharged, and in the 2000-2001 school year, 1682 students were discharged. These numbers are substantially higher than the school profile figures and indicate that almost 50% of FKL's student population is being discharged each year.

122. According to the Defendants, approximately 317 students were marked as LTA this school year.

123. The data produced by Defendants also showed that only three FKL students earned GED diplomas since the Fall of 2000.

124. FKL also has a significantly high number of students and parents whose first language is not English. A School Report Card issued by Defendants indicated that between 19.2 and 25.0% of students who attend FKL are ELLs. The Report Card also shows that 58% of the student body is classified as Hispanic, which is significantly higher than the 34.9% rate at which they appear in the citywide high school student body.

125. Defendants were directed to send letters and surveys to all students discharged from FKL since January 2000. According to Defendants, they were unable to mail the letter and survey to 545 students because they did not have correct address information; furthermore, approximately 416 letters and surveys were returned to the Post Office as undeliverable.

126. Parents were given the option of allowing AFC to review the survey responses. As of the date of this complaint, Plaintiffs' counsel has received 144 surveys. When asked whether they were told they had to leave FKL or attend a GED program, 73 individuals who filled out the survey checked "yes."

127. Upon information and belief, many of the students who were discharged were told that their only choice was to attend a GED program.

128. Upon information and belief, there are children in the FKL GED program who were transferred there improperly and are not receiving appropriate educational services.

129. Defendants failed to train, supervise and monitor school employees even though Defendants had knowledge that school employees were likely to confront

situations reflecting the facts set forth above, and that training or supervision would reduce the likelihood of school employees mishandling these situations.

130. Defendants' actions constitute a policy, custom and practice of illegally excluding, expelling or discharging students.

131. Defendants have denied students the right to educational services, including the opportunity to receive instruction toward a regular high school diploma, AIS, ERSS and guidance services.

132. Defendants have denied students with disabilities the right to substantive and procedural protections of federal and state law.

133. Defendants have not developed a system to ensure that FKL stops illegally excluding, expelling or discharging students from its high school program and to ensure that principals and other staff are held accountable for complying with federal, state and local laws that protect the rights of students to stay in school.

134. Class members have been damaged by their exclusion from school and education services. They are continuing to suffer harm from the existence of the illegal policy and practice.

CAUSES OF ACTION

135. Defendants have violated the rights of the named Plaintiffs and class members under the due process clause of the 14th Amendment to the Constitution of the United States.

136. Defendants have violated the constitutional rights of the named Plaintiffs and class members under 42 U.S.C. § 1983.

137. Defendants have violated the rights of Plaintiffs with disabilities under the IDEA and the regulations promulgated thereunder, Section 504 of the Rehabilitation Act of 1973 and the regulations promulgated thereunder, and New York State Education Law § 4400 et. seq. and the regulations promulgated thereunder.

138. Defendants have violated the rights of Plaintiffs who are classified as ELLs under Title III of the No Child Left Behind Act, 20 U.S.C. § 6801 et seq., and the regulations promulgated thereunder, and New York State Commissioner's Regulations, N.Y.C.R.R. §§ 100.2(f), 154.

139. Defendants have violated the rights of the named Plaintiffs and class members under New York State Education Law §§ 3202, 3214, and the regulations promulgated thereunder.

140. Defendants have violated the rights of the named Plaintiffs and class members under the New York City Chancellor's Regulations A-101 and A-443.

RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and all others similarly situated, request that this Court:

- a. Certify a class;
- b. Enter a judgment pursuant to 28 USC §§ 2201 and 2202 that Defendants have violated Plaintiffs' rights by excluding them from school without due process and denying them of their right to educational services to which they are entitled under Federal and State law;
- c. Enter a permanent injunction restraining Defendants from excluding class members from school without due process and from denying them

educational services to which they are entitled under law, including but not limited to: (i) the right to attend a full-time school program that will prepare class members to receive a high school diploma; (ii) the right to receive AIS, ERSS, guidance and other services through the recommendation of the Pupil Personnel Team(s); (iii) to the extent that they are disabled under the meaning of the IDEA or Section 504, the right to receive a free appropriate public education; and (iv) to the extent that they are classified as ELLs, the right to receive appropriate instructional services under Title III of the No Child Left Behind Act and under the New York State Commissioner's Regulations.

d. Enter an order:

- i. Directing Defendants to identify and contact all class members and offer them the opportunity to: (a) immediately re-enroll in a high school diploma granting program at FKL or another full-time program that will prepare them to receive a high school diploma; (b) enroll in a GED program if they do not wish to attend a diploma granting program; (c) receive individual and group tutoring, after school assistance and other AIS, ERSS and guidance services; (d) to the extent that they are disabled under the meaning of the IDEA or Section 504, receive a free appropriate public education; and (e) to the extent that they are classified as ELLs, receive appropriate instructional services.

- ii. Requiring Defendants to design, with Plaintiffs' assistance and input, an effective plan to ensure that class members will be afforded substantive and procedural protections and will not be excluded from school in violation of their rights. The plan should include, among other things: (a) a plan for provision of AIS, ERSS, guidance and other services for children who are at risk of not earning a diploma or are having attendance problems; and (b) training for all relevant personnel at FKL and the Superintendent's Office on the mandates of due process, state and local law and policies that relate to the claims in question;
- iii. Allowing class members the opportunity to stay in the public school system beyond their 21st year to compensate for time during which they were excluded;
- iv. Requiring Defendants to ensure that all written and other notices, procedures and policies used in connection with transferring, discharging or expelling students from FKL comport with federal, state and local law and are designed to ensure that the class members' rights are protected;
- v. Requiring Defendants to submit to counsel for Plaintiffs and the Court regular periodic reports on (a) the implementation of the plan, (b) data about children who are excluded, suspended, expelled, discharged or disciplined, including their attendance and re-enrollment, and (c) the development of procedures and policies;

- vi. Directing Defendants to pay Plaintiffs compensatory and punitive damages pursuant to U.S.C. § 1982 and 42 U.S.C. § 1985, in an amount that is just and reasonable;
 - vii. Appointing a special master or independent monitor to oversee and monitor Defendants' implementation of the requirements of this Order; and
 - viii. Retaining jurisdiction of this action for all purposes, including entry of such additional orders as may be necessary or proper.
- e. Award to Plaintiffs their costs and attorneys fees; and
 - f. Grant such other and further relief as may be appropriate.

Dated: March 28, 2003
New York, New York

Respectfully submitted,

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