

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
RV,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION; NEW YORK CITY
BOARD OF EDUCATION; JOEL
KLEIN; REYES IRIZARRY; ANA
SANTIAGO,

Defendants.
-----X

SG, et al.,

Plaintiffs,

-against-

NEW YORK CITY BOARD OF
EDUCATION, et al.,
Defendants.
-----X

GABRIEL RUIZ, et al.,

Plaintiffs,

-against-

PAUL PEDOTA, et al.,
Defendants.
-----X

APPEARANCES:

For the Plaintiffs: Advocates for Children of New York, Inc.
151 West 30th Street, 5th Floor
New York, New York 10001
By: Elisa Hyman
Sonal Patel
Sarah Hechtman

For the Defendants: New York City Department of Education

MEMORANDUM, JUDGMENT
& ORDER

03-CV-5649 (JBW)

03-CV-5152 (JBW)

03-CV-0502 (JBW)

Office of Legal Services
52 Chambers Street, Room 308
New York, New York 10007
By: Alexandra D. Michalos

New York City Law Department
100 Church Street, Room 2-110
New York, New York 10007
By: Emily Sweet, Assistant Corporation Counsel

Table of Contents

- I. Introduction
- II. Importance of Litigation
- III. Bushwick High School
 - A. Claims
 - B. Resolution
- IV. Martin Luther King, Jr. High School
 - A. Claims
 - B. Resolution
- V. Franklin K. Lane High School
 - A. Claims
 - B. Resolution
- VI. Conclusion

Appendix A *RV* Settlement Agreement

Appendix B *Ruiz* Settlement Agreement

Jack B. Weinstein, Senior United States District Judge:

I. Introduction

Exposed in these three cases is a lesion—the alleged “pushing out” of difficult-to-educate students—that has been festering for many years. *See, e.g., Knight v. Bd. of Educ.*, 48 F.R.D. 115 (E.D.N.Y. 1969) (“This transfer from the rolls of Franklin K. Lane High School was, in a number of instances, a *de facto* discharge from the high schools operated by the defendant. . . .”); *Knight v. Bd. of Educ.*, 48 F.R.D. 108 (E.D.N.Y. 1969). Like generations of students before them, plaintiffs in these cases believe that they were illegally discharged from a New York City public school.

This twenty-first century iteration of the problem began when plaintiffs, led by Gabriel Ruiz, filed a class action complaint against the New York City Department of Education (“DOE”) and others in *Ruiz v. Pedota* (03-CV-0502). This first case, involving Franklin K. Lane High School (“Lane”), was settled on January 6, 2004. *See Ruiz v. Pedota*, 2004 U.S. DIST. LEXIS 50 (E.D.N.Y. Jan. 6, 2004).

In October of 2003, a second action on behalf of student SG was filed against the DOE, alleging the pushing out of students at Martin Luther King, Jr. High School (“King”). *See SG, et al. v. New York City Bd. of Educ., et al.*, No. 03-CV-5152 (filed Oct. 10, 2003). This case was dismissed on consent on May 26, 2004.

Rounding out the trilogy, plaintiff RV commenced an action in November of 2003 based on the alleged illegal exclusion, expulsion and discharge of high school students from Bushwick High School (“Bushwick”). *See RV, et al. v. New York City Bd. of Educ., et al.*, No. 03-CV-5649 (filed Nov. 7, 2003). The parties in *RV* have entered into a settlement agreement.

Defendants denied liability in all these cases. Nevertheless, they have pledged to take noteworthy action and provide services to ensure that the problem is ameliorated and students receive more support to complete their secondary education.

Resolution of these cases will not solve the deep-seated socioeconomic, political and educational issues that underlay failures of our educational system. But, on the fiftieth anniversary of the historic *Brown v. Board of Education* case, it is a fitting reminder that the American struggle for educational excellence for all— a *sine qua non* of equality of opportunity— goes on, and with some success. See, e.g., *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954) (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”); *Hart v. Community Sch. Bd. of Brooklyn*, 383 F. Supp. 699 (E.D.N.Y. 1974) (finding that school had been unconstitutionally segregated); Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* 751 ff. (Rev. ed. 2004) (summary of post-*Brown* development); Jack Greenberg, *Crusader in the Courts: Legal Battles of the Civil Rights Movement* (50th Ann. ed. 2004); Charles J. Ogletree, Jr., *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education* (2004); Robert Cottrol, Raymond T. Diamond & Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution* (2003); Lee Cokorinos, with an Introduction by Theodore M. Shaw, *The Assault on Diversity* (2003); Gary Orfield & Susan E. Eaton, with a forward by Elaine R. Jones, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (1996); Harvard Law School, *Materials for the Celebration of Fiftieth Anniversary of Brown v. Board of Education* (2004); Constance Baker Motley, *Equal Justice Under Law* (1998); Robert L. Carter, *Thirty-Five Years Later: New Perspectives on Brown* (1993); Oliver W. Hill, *The Big*

Bang: *Brown v. Board of Education* and Beyond (2000). But see Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991); Tresa Baldas, *School Suits: Educators face a variety of legal claims, spurious or not*, Nat'l L.J., May 17, 2004 at 1 ("A fear of lawsuits has gripped the nation's schools, creating a power struggle between the courts and educators, who say they have been forced into a defensive teaching mode.").

II. Importance of Litigation

Although the Supreme Court has held that education is not, for federal constitutional purposes, a fundamental right, see *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), it is universally acknowledged that good schooling for all is essential in a republic, particularly one engaged in global competition for minds and dollars. In New York State, the right to public education is enshrined in its constitution. See N.Y. Const. Art. XI, § 1; *Campaign for Fiscal Equity, Inc. v. New York*, 100 N.Y.2d 893, 901, 801 N.E.2d 326, 328, 769 N.Y.S.2d 106, 108 (2003) ("We begin with a unanimous recognition of the importance of education in our democracy. The fundamental value of education is embedded in the Education Article of the New York State Constitution."). It is embraced by the state's educators and leaders. See, e.g., Tamar Lewin & Jennifer Medina, *To Cut Failure Rate, Schools Shed Students*, N.Y. Times, July 31, 2004 at A1 (quoting Deputy Mayor: "For any child being pushed out, we need to correct that problem, we need to fix it as soon as possible.").

Courts must view the *RV* and related cases with utmost seriousness since they involve constitutionally protected rights. They are mandated to ensure that complaining students are not deprived of opportunities to acquire necessary skills and understanding equal to that of other public school students.

While the instant litigations' total impact is relatively small in a City public school student body of some one million students, its principles—acknowledged by the City—set a standard for the entire system. *See* N.Y.C. Bd. of Educ., Vital Statistics (2003) (over one million students in the New York City public school system; the school budget in 2001 exceeding eleven billion dollars). In such a vast educational organization it is difficult to provide every student with the skilled individual care we would want for our own children. *See, e.g.,* Elisa Gootman, *City Creates New Paths to a Diploma*, N.Y. Times, May 29, 2004 at B1 (“[T]he Department of Education has laid the city’s low graduation rates largely at the feet of its biggest high schools, which officials say foster a sense of anonymity that allows many students to skip through the cracks.”). But—judging by these three cases—the City and its officials are struggling to improve the situation. *See, e.g.,* Elisa Gootman, *City’s Small Schools Uneasy Inside the Big Ones*, N.Y. Times, Apr. 14, 2004 at A1 (“New York City has been a nation-wide leader in the small schools movement, and replacing large high schools is a centerpiece of [the mayor’s] efforts to overhaul the school system.”); Elisa Gootman, *City Creates New Paths to a Diploma*, N.Y. Times, May 29, 2004 at B1 (“The push to create more alternative high schools also comes in the wake of a lawsuit filed last year by the nonprofit group Advocates for Children, which argued that many lagging students were being pushed out of school against their will.”).

III. Bushwick High School

A. Claims

Plaintiff RV brought suit on behalf of himself and others similarly situated alleging that defendants denied them due process of law “by adopting a policy that result[ed] in their exclusion from school and denial of their right to educational services. . . .” Compl. at ¶ 1. The

named plaintiff is an eighteen year-old Bushwick High School student with twenty credits towards graduation. He was active in school extracurricular activities, but he struggled in the academic arena, rarely attending classes. This litigation was filed as a class action.

Plaintiff alleges that he was rebuffed in his attempts to re-enroll in Bushwick. The school officials allegedly informed him that he could only enroll in the General Education Diploma ("GED") program. *See, e.g., Karen W. Arenson, Making G.E.D. Programs More Than Test Prep*, N.Y. Times, June 16, 2004 at B7. Plaintiff tried the GED arrangement, but he was not satisfied that it met his educational needs. He continued to go to the school grounds and participate in student activities; he did not attend regular classes. He claims that after several meetings with school officials, he remained barred from regular enrollment in Bushwick. At the time the suit was filed, RV had missed two months of school.

It was alleged that Bushwick unlawfully excluded approximately thirty percent of its students during the school years 1998 to 2001. Many of the discharges allegedly violated the Fourteenth Amendment of the United States Constitution, section 1983 of title 42 of the United States Code, sections 3202 and 3214 of the New York State Education Law, and the New York City Chancellor's Educational Regulations. The complaint seeks an injunction restraining defendants from illegally excluding students from Bushwick, and other equitable relief.

B. Resolution

The parties have entered into a settlement agreement now approved by this court. *See* Appendix A. It resolves the litigation without an admission of fault or liability. It protects the rights of Bushwick High School students who (i) have been designated as missing twenty or more consecutive school days ("Long-Term Absent Students"); (ii) have been discharged or

transferred from Bushwick's register ("Separated Students"); and (iii) are currently enrolled ("Current Students").

Separated Students are given the right to re-enroll in Bushwick. Before enrolling, they are required to attend a useful guidance conference. In some instances, Defendants will also allow Separated Students to take classes at other DOE high schools if a comparable course is unavailable at Bushwick. Long-Term Absent Students will be readmitted to Bushwick within two days notice to the school by a student. The DOE has provided Separated Students and certain Long-Term Absent Students with the option of registering for the upcoming summer school session. Separated and some Long-Term Absent Students may voluntarily enroll in a GED program. Other important educational alternatives are addressed.

The agreement requires a Planning Interview prior to the discharge or transfer of most students. This is a crucial event. The student's record is reviewed and the best educational course is recommended in the presence of parent and student. The student and parent will then be in a good position to decide the student's future at Bushwick High School or in another branch of the City public schools. The interview includes at a minimum: (1) a review of the student's credits and progress towards a diploma; (2) an explanation of the student's rights; and (3) consideration of whether additional services are necessary to ensure that the student completes his or her education.

The DOE will provide data concerning discharges and transfers from Bushwick on a quarterly basis.

Notice of this settlement will be sent to interested parties in English and Spanish.

IV. Martin Luther King, Jr. High School

A. Claims

SG was a fifteen year-old student at Martin Luther King, Jr. High School ("King"). She brought suit on behalf of all students excluded from King "for reasons of age, lack of sufficient credits, failure to pass Regents' exams, poor grades, truancy or pregnancy. . . ." Compl. at ¶ 36.

The early part of 2002 was an especially traumatic period for SG. Her father died in January. She became pregnant in February. During the 2002-2003 school year SG struggled with class attendance and performance. She alleged that the school offered her no assistance. At the beginning of the 2003 school year, plaintiff claimed that she was informed that King was not a school for "pregnant people." Compl. at ¶ 44. While attending a public school designated for students with child, SG discovered that her former school should not have summarily excluded her. She returned to King and was allegedly told that she could not re-enroll. The complaint sought injunctive and declaratory relief and compensatory and punitive damages.

B. Resolution

The case was dismissed on consent without prejudice as moot when a satisfactory resolution of SG's complaint was reached.

V. Franklin K. Lane High School

A. Claims

Plaintiff Gabriel Ruiz was a seventeen year-old student at Franklin K. Lane High School ("Lane"), a school historically beset with serious problems. *See, e.g., Knight v. Bd. of Educ.*, 48 F.R.D. 108 (E.D.N.Y. 1969); *Knight v. Bd. of Educ.*, 48 F.R.D. 115 (E.D.N.Y. 1969). Ruiz was classified as an "English Language Learner." Throughout his time at Lane, he took "English as a Second Language" courses.

The school offered Saturday classes, but plaintiff claimed that the school gave no other assistance to help him. In June of 2002, Ruiz was absent from school for three weeks. He claimed that he told his guidance counselor that he was depressed. When he returned to school in the fall, he was told that he had insufficient credits to remain in school and that he had to enter a GED program. The choice allegedly given to Ruiz was either enter the GED program, or go home. Seeing no other option, Ruiz, allegedly, reluctantly went home.

B. Resolution

The parties entered into a settlement agreement. *See* Appendix B. The agreement reached in *RV* was modeled on the *Ruiz* agreement and contains many of the same provisions.

It also protects the rights of a similar cohort of Lane students: those who (i) had been designated as missing twenty or more consecutive school days ("Long-Term Absent Students"); (ii) had been discharged or transferred from Lane's register ("Separated Students"); and (iii) were currently enrolled ("Current Students").

Separated Students were given the right to re-enroll in Lane after attending a guidance conference, in addition to other rights discussed in Part III.B., *supra*. Significantly, the agreement called for implementation of a "Young Adult Success Center." The center is to be operated in conjunction with pre-existing support services. It is to be available at least twelve hours a week for Current and Separated Students to provide crucial support. *See* Tamar Lewin, *Students Discharged Early are Invited to Return by City*, N.Y. Times, Jan. 30, 2004 at B7; Tamar Lewin, *City Settles Suit and Will Take Back Students*, N.Y. Times, Jan. 8, 2004 at B3.

VI. Conclusion

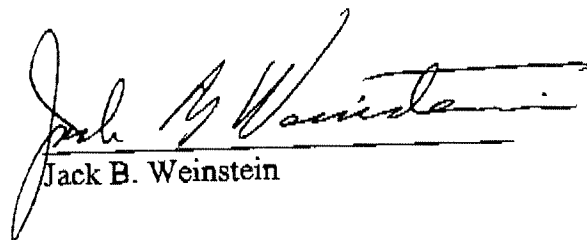
RV v. New York City Department of Education (03-CV-5649) and *Ruiz v. Pedota* (03-CV-

0502) are discontinued and dismissed without prejudice. The settlement agreements in appendices A and B are approved. This court has jurisdiction to adjudicate any dispute or controversy concerning the terms and conditions of the settlement agreement. The court retains foot-of-the-decree jurisdiction. Compliance information required to be furnished periodically to plaintiffs' attorneys by Section 8 of the *RV* agreement shall be filed with the court.

SG v. New York City Department of Education (03-CV-5152) is dismissed.

The court thanks the attorneys and officials of the City of New York and of Advocates for Children for resolving these cases so effectively with the assistance of Special Master Joshua Hill.

SO ORDERED.



Jack B. Weinstein

Dated: June 17, 2004
Brooklyn, New York