

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D.S., by and through his mother and next friend S.S; D.W.1; and D.W.2, by and through his mother and next friend N.W.; R.H., by and through this mother and next friend H.G.; N.L., by and through her mother and next friend S.L.; and L.H., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

NEW YORK CITY DEPARTMENT OF EDUCATION; NEW YORK CITY BOARD OF EDUCATION; JOEL KLEIN, in his official capacity as Chancellor of the New York City School District; MARCIA LYLES, in her official capacity as Regional Superintendent of Region 8; and SPENCER HOLDER, in his official capacity as Principal of Boys and Girls High School,

Defendants.

Civ. No.: 05-4787 (JBW)(CLP)

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This is a class action brought on behalf of former and current students of Boys and Girls High School (“Boys and Girls”) who claim they have been illegally excluded and denied the right to an education (collectively “excluded”) in violation of the U.S. Constitution, federal law and New York state law.

2. Boys and Girls is a New York City public high school located at 1700 Fulton St, Brooklyn, New York in Region 8 and Community School District 16, within the Eastern District of New York.

3. Plaintiffs are students who, while on the school register at Boys and Girls, have been illegally excluded from the educational program at the Boys & Girls to which they are entitled. Upon information and belief, students in the Plaintiff class have been discharged or “pushed out” of school, denied a program card with credit granting classes, turned away from the school despite being registered, subjected to partial day exclusions, and warehoused in the school auditorium during the regular school day without adequate (or any) instruction.

4. Defendants' deprivations of the rights of the Plaintiff class have occurred without due process of law and in violation of the above-cited authorities. Plaintiffs have brought this action to seek immediate redress for Defendants' exclusionary practices.

JURISDICTION

5. 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; under 42 U.S.C. § 1983; and under 40 U.S.C. 1400 et. seq. in that subclass members claim that they are being denied rights under the Individuals with Disabilities Education Improvement Act ("IDEA 2004" or "IDEIA"). 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.

6. Venue is proper under 28 U.S.C. § 1391(b).

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

8. 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.

9. Plaintiffs are not required to exhaust administrative procedures because (1) Plaintiffs are threatened with irreparable harm; (2) Plaintiffs are challenging policies and practices of general applicability that are contrary to numerous federal and state laws; (3) exhaustion of such remedies is futile and will not provide adequate relief; and (4) no adequate administrative procedures exist.

10. As set forth in more detail herein, Plaintiffs have been subjected to the illegalities complained of on more than one occasion, giving rise to a reasonable expectation of suffering the same illegalities again during their school careers without relief from this Court.

PARTIES

11. Plaintiff S.S. is the mother of D.S., a 17-year-old student with a disability who is on the register at Boys and Girls.

12. Plaintiff D.W.1 is an 18-year-old student who is on the register at Boys and Girls.

13. Plaintiff N.W. is the parent of D.W.2, a 17-year-old student with a disability who is on the register at Boys and Girls.

14. Plaintiff H.G. is the mother of R.H., a 16-year old student who attended Boys and Girls.

15. Plaintiff S.L. is the mother of N.L., a 17-year old student who attended Boys and Girls.

16. Plaintiff L.H. is a 21-year old student with a disability who attended Boys and Girls.

17. Defendant The NEW YORK CITY DEPARTMENT OF EDUCATION (“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). It is a recipient of federal financial assistance.

18. Defendant The NEW YORK CITY BOARD OF EDUCATION (“the Board of Education” or “the 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). It is a recipient of federal financial assistance.

19. Defendant JOEL KLEIN is the Chancellor of the New York City School District (“the 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.

20. Defendant MARCIA LYLES is the Superintendent of Region 8 (“the 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.

21. Defendant SPENCER HOLDER is the Principal of Boys and Girls 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.

CLASS ACTION ALLEGATIONS

22. Plaintiffs sue on behalf of themselves and all other similarly situated individuals, and seek to represent, pursuant to Rule 23 (a), Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, the class of students who have been or will be or are at risk of being subject to the illegal practices and policies resulting in their illegal exclusion from education by Boys and Girls.

23. The class period commences on the date three years prior to the date of the initial complaint in this case and extends to the date on which Defendants are enjoined from, or otherwise cease, enforcing their illegal policies and practices.

24. The members of the class are so numerous as to render joinder impracticable. Defendants have previously already acknowledged that there is a citywide problem of schools excluding children.

25. There are questions of law and fact common to the class including (1) that class members have common rights under the due process clause of the Fourteenth Amendment of the U.S. Constitution to be free from unconstitutional denial of their right to educational services guaranteed to them under New York state law and (2) whether Defendants have violated the law by illegally excluding students.

26. The named Plaintiffs are adequate representatives of the class. The violations of law alleged by the named Plaintiffs stem from the same course of conduct by Defendants that violated and continues to violate the rights of members of the class; the legal theory under which the named Plaintiffs seek relief is the same or similar to that on which the class will rely. In addition, the harm suffered by the named Plaintiffs is typical of the harm suffered by absent class members.

27. Counsel for the named Plaintiffs are experienced in federal class action litigation and will vigorously pursue this action in the interest of the class.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of hundreds or thousands of separate actions would be inefficient and wasteful of legal resources; (b) the members of the class may be scattered throughout New

York City and are not likely to be able to vindicate and enforce their Constitutional and statutory rights unless this action is maintained as a class action; (c) the issues raised can be more fairly and efficiently resolved in the context of a single class action than piecemeal in many separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against Defendants which would establish incompatible standards of conduct for Defendants; (f) Defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class especially on issues of liability predominate over any question, such as that of individual damages, that affect individual members.

Proposed Subclass of Youth with Disabilities: Subclass A

29. Plaintiffs also seek certification of a Subclass of youth with disabilities who have been, will be or are at risk of being illegally excluded from Boys & Girls.

30. The proposed subclass is so numerous that joinder of all members is impracticable due to the potentially hundreds of students who fall within this class.

31. There are questions of law or fact common to the named Plaintiffs and the members of the proposed subclass such as whether Defendants have violated the rights of the subclass members by failing to provide them with a Free Appropriate Public Education (FAPE) and depriving them of their procedural rights under the IDEA and New York State law.

32. Plaintiffs' claims are typical of those of the subclass they seek to represent.

Proposed Subclass of Youth Subject to Illegal Taking of Property: Subclass B

33. Plaintiffs also seek certification of a Subclass of youth who have been, or are at risk of being, subject to illegal taking of their personal property without due process.

34. The proposed subclass is so numerous that joinder of all members is impracticable due to the potentially hundreds of students who fall within this class.

35. There are questions of law or fact common to the named Plaintiffs and the members of the proposed subclass such as whether Defendants have violated the rights of the subclass members by taking their personal property and depriving them of their constitutional rights.

36. Plaintiffs' claims are typical of those of the subclass they seek to represent.

FACTUAL ALLEGATIONS

37. Boys and Girls is a comprehensive public high school operated by Defendants and located in the Bedford-Stuyvesant neighborhood of Brooklyn, New York. In 2003-2004, 91.2% of the student population was African-American, 7.2% of the student population was Latino, 1.0% of the student population was Asian and 0.6% of the student population was White.

38. Upon information and belief, the current enrollment at Boys and Girls is 4,700 students, which is well over capacity.

39. Defendants have admitted that within the first two months of the current school year, approximately 500 Boys and Girls students were placed on modified schedules in which they receive less than 5 ½ hours of instruction per day and approximately 500 students are marked as Long-Term Absent ("LTA").

40. Upon information and belief, a total of 1156 students were discharged, transferred or graduated from Boys and Girls in 2003-2004 and 1325 students were discharged, transferred or graduated from Boys and Girls in 2004-2005. Of these, approximately 600 students were graduates. A total of 470 students have been discharged or transferred this current academic year.

41. Upon information and belief, from 1996 to 2004, the number of students receiving diplomas from Boys and Girls has decreased significantly. 404 diplomas were issued to the graduating class of 1996; only 267 diplomas were issued to the graduating class of 2004.

42. Upon information and belief, Boys and Girls graduated a mere five students who were not in the 2004 class cohort, i.e. only five students who were over-age for their senior year received diplomas from Boys and Girls that year, which is significantly lower than other comparable schools.

43. Boys and Girls has a long history of illegally excluding students. The former principal of Boys and Girls admitted this exclusion on record at an impartial hearing conducted pursuant to the IDEA that the school had a policy of denying registered students' access to the school.

44. Boys and Girls' long-standing policy of excluding students is also reflected in a multitude of decisions in these administrative hearings operated by Defendants. For example, one student who attended Boys and Girls "had not been assigned to any regular classes. Rather, when she arrived at school at 7:30 a.m. she spent three periods in the auditorium." (Case 56862, Amended Findings of Fact and Decision, dated October 11, 2005). Another student "was referred to Boys and Girls High School [on September 2002] but when he tried to enroll there, he was told that the school was overcrowded and he could not enroll. From September 2002 until March 2003, the student was not placed and did not attend school." (Case 53659, Statement of Agreement and Order, dated February 10, 2004). Another student was "turned away from Boys and Girls High School on opening day with the explanation that [the student] did not have enough high school credits." (Case 48536, Findings of Fact and Decision, dated November 4, 2002).

45. On September 19, 2002, a series of impartial hearings were held with regard to five individual students who were registered to attend Boys and Girls and whom the school refused to admit. The hearing officer noted in her decisions that "the particular act of preventing a school age youngster from attending the public school on whose roster he is listed or his home zone school may well leave those individuals who undertake the act open to charges of civil and/or criminal neglect." She went on to note that she has "personal knowledge that the principal of Boys and Girls High School has unlawfully excluded special education students for the past two years." (Case # 47800, Findings of Fact and Decision, dated September 19, 2002; Case ## 47806, 47814, 47795, Findings of Fact and Decisions, dated September 20, 2002.)

46. On September 20, 2002, a series of impartial hearings were held regarding three individual students who were placed at Boys and Girls and whom the school refused to admit. Defendants' representative present at these hearing testified that "it was a pattern of the principal of the school not to allow special education students to attend Boys and Girls High School" but could not give any known reason for the principal's actions. (Case # 47872, Findings of Fact and Decision, dated September 27, 2002; Case # 47876, Findings of Fact and Decision, dated September 26, 2002; Case 47877, Findings of Fact and Decision, dated September 25, 2002.)

47. Boys and Girls is engaging in illegal expulsions and exclusions that deny Plaintiffs their rights to education in violation of the U.S. Constitution and New York State law. These practices illegally exclude the affected students from school without due process.

48. Defendants have been repeatedly made aware of the recurring violations at Boys and Girls but have refused to act to address the problem. Plaintiffs' counsel, as well as numerous other education advocates and attorneys, have previously requested that the illegal activity cease and that students be admitted, permitted to attend classes and given full academic schedule that will prepare the students for graduation as required by law.

49. Defendants have implemented new policies with regards to the transfer and discharge of students from high schools. However, whatever changes have been made by Defendants have not been effective in remedying the problem and are insufficient. Defendants have not ensured that responsible staff are trained and that relevant officials are monitoring and tracking the school's practices. Defendants' actions continue to constitute a policy and custom of illegally excluding students.

50. Defendants' current and former employees have apparently admitted to the media that they had engaged in the practices complained of herein.

51. Upon information and belief, Boys and Girls has a practice of routinely taking students' winter coats as a purported disciplinary measure. Boys and Girls refuses to return the coats to students. Upon information and belief, there are numerous coats at Boys and Girls that were illegally taken from students and never returned.

52. Upon information and belief the school failed to label the coats they improperly confiscated.

53. Upon information and belief, Boys and Girls also has a practice of routinely taking away students' ID cards, which they need to attend school as a disciplinary measure and charging each student \$5 to obtain it back.

54. Plaintiffs informed Defendants' counsel of these practices on November 22, 2005. Upon information and belief, as of the date of this Amended Complaint, no action has been taken by Defendants to notify students of their right to retrieve their coats nor have any coats been returned.

55. In 2003-2004, approximately 77% of the entering 9th and 10th graders of Boys & Girls High School qualified for free lunch. These types of practices are unconscionable, but particularly so in this case, where students are living in poverty and it is winter.

56. Class members are being irreparably harmed, in that they are being denied access to school.

57. Subclass A members are being irreparably harmed because they are being denied access to school and not being provided special education services to which they are entitled.

58. Subclass B members are being irreparably harmed, because they are being denied their property without due process, and, in particular, being denied of their coats in the winter time.

FACTUAL ALLEGATIONS OF THE NAMED PLAINTIFFS

59. All of the named Plaintiffs were excluded from the regular high school program at Boys and Girls without due process.

60. All of the named plaintiffs were denied legally adequate educational services.

61. None of the named Plaintiffs was provided sufficient additional academic or guidance services prior to being excluded from the high school program at Boys and Girls. All the named plaintiffs struggled academically during their exclusion.

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

63. None of the named Plaintiffs was afforded free breakfast or lunch as required by law.

S.S. and D.S.

64. S.S. is the parent of D.S., a 17-year-old student with a disability who is on the register at Boys and Girls.

65. D.S. first enrolled at Boys and Girls in September of 2003. Soon after arriving at the school, D.S. became subject to a partial day exclusion where he was required to leave school after fifth period every day, as opposed to the required eight periods afforded to other students.

66. In December 2003, D.S. became subject to another partial day exclusion when his schedule was reduced to three periods per day.

67. On or about February 2004, the school imposed yet another exclusion by moving D.S. to the “auditorium program”, also known as the Attendance Academic Intervention Program (“AAIP”).

68. Upon information and belief, students in the AAIP were forced to arrive at school at 7:30am and be dismissed at 10:30am. Students in the AAIP spend the entire school day in the auditorium of the school building. The auditorium is not grouped by age or grade level. Students would not receive

textbooks; instead they would be given handouts and worksheets without substantive academic instruction in all required subjects to prepare for a diploma.

69. Upon information and belief, students in the AAIP do not earn credits in most subject matters required for a high school diploma.

70. One of the few school staff persons responsible for overseeing the students in the AAIP program is Mr. Holder, who upon information and belief is the brother of principal Spencer Holder.

71. Mr. Philpotts, a Counselor at Boys and Girls, and Mr. Dominguez, an Assistant Principal at Boys Girls, informed D.S. that he would receive a full schedule only if he completed all of his homework assignments and came to school every day on time.

72. D.S. was never restored to a regular schedule of classes at Boys and Girls.

73. In July of 2004, Defendants evaluated D.S. for a disability. Defendants' own psycho-educational evaluation of D.S. states that D.S. is in a "special program for students who have poor attendance and behavior problems. He doesn't change classes. He is very angry at having been placed in this program where he says he is " "not learning anything."

74. D.S. was subsequently classified as learning disabled. His Individualized Education Plan ("IEP") recommends that he be placed in a Collaborative Team Teaching setting and receive counseling.

75. D.S. returned to Boys and Girls in September 2004. In spite of the clear mandates of his IEP, D.S. was again excluded by being placed in the auditorium program. D.S. never received his mandated services while at Boys and Girls.

76. In October 2004, school officials recommended that D.S. attend a New Beginnings program, an annex program whereby D.S. remained on the register at Boys and Girls.

77. In February 2005, D.S. was illegally excluded without due process from New Beginnings for violating a disciplinary rule. When D.S. later attempted to return to New Beginnings, the Assistant Principal informed S.S. that D.S. was no longer permitted in the building and had to return to Boys and Girls.

78. S.S. attempted to return D.S. to Boys and Girls in March 2005. Despite the fact that D.S. remained on Boys and Girls' register, Mr. Dominguez informed S.S. that D.S. was not allowed back at the school. S.S. informed Mr. Dominguez that New Beginnings would not permit D.S. to return to classes. Mr.

Dominguez told S.S. that she had no choice but to take D.S. back to New Beginnings. He refused to allow D.S. to attend Boys and Girls and the New Beginnings program closed.

79. Despite Boys and Girls' refusal to let D.S. to attend, D.S. remained on the school's register and continued to receive notices from Boys and Girls stating that he was absent from school.

80. During the summer of 2005, S.S. received a form notice in the mail from Defendant Spencer Holder, principal of Boys and Girls, telling D.S. to report to school in September 2005 and that "a full day of instruction is planned."

81. D.S. attempted to return to Boys and Girls to get his program card in September 2005. Mr. Dominguez refused to let him remain in the school building and told him he had been discharged.

82. Mr. Dominguez informed S.S. via a voicemail message that because D.S. was 17-years-old and had no credits, he had no choice now but to enroll in a GED program. Neither S.S. nor D.S. wanted D.S. to enter a GED program. Both want D.S. to earn a high school diploma.

83. D.S. had been out of school since February 2005.

84. Plaintiffs' attorneys notified Defendants on October 12, 2005 and again on October 18, 2005 of D.S.'s name, date of birth and that D.S. was out of school.

85. D.S. was offered placement in another high school for the first time on October 28, 2005. However, the school was not an appropriate placement for D.S. With the assistance of Plaintiffs' counsel, D.S. is currently enrolled in W. E. B. DuBois High School.

N.W. and D.W.1 and D.W.2

86. N.W. is the parent of D.W.1, an 18-year-old student who is on the register at Boys and Girls High School. D.W.1 was born on June 16, 1987. N.W. is also the parent of D.W.2, a 17-year-old student with a disability who is on the register at Boys and Girls. D.W.2 was born on September 27, 1988.

87. D.W.1 first enrolled at Boys and Girls in September 2003 and was immediately subject to a partial day exclusion, where he was only allowed to attend three periods per day.

88. Within days, Mr. Philpotts informed N.W. that D.W.1 should leave the school because he was too old to be in the ninth grade. He recommended that D.W.1 go to a GED program and did not permit D.W.1 to attend Boys and Girls.

89. When D.W.1 attempted to enroll in the GED program, he was not accepted because he lacked the number of credits the program required. N.W. searched for a placement for D.W.1 for approximately six months, but was not able to find a school that would admit D.W.1.

90. On or about February 2004, N.W. went to Defendants' Learning Support Center for Region 8 where she learned that D.W.1 was still on the register at Boys and Girls.

91. Defendants' employees at Region 8 advised N.W. to return to Boys and Girls and inform them of D.W.1's right to remain in school until the age of 21.

92. Upon his return to Boys and Girls, D.W.1 was enrolled but again subject to a partial day exclusion and only allowed to attend school for three periods per day. This exclusion remained in effect for the rest of the 2003-2004 school year.

93. D.W.1 spent the entire 2003-2004 school year in the auditorium.

94. Upon returning to Boys and Girls in September 2004, D.W.1 was subject to another partial day exclusion where he was only allowed to attend school for three periods per day.

95. At some point during the 2004-2005 school year, D.W.1. was placed on a schedule where he was only permitted to attend school for four periods per day.

96. In September and October 2005, D.W.1 was only been permitted to attend school for five periods a day.

97. Plaintiffs' attorney provided Defendants with name and date of birth of D.W.1 on October 12, 2005 and again on October 18, 2005.

98. D.W.1 was finally permitted to attend a full day of classes the first week of November 2005.

99. On or about November 15, 2005, Dean Bodega, a school official, took from D.W.1 his winter coat and his school ID card. D.W.1 was informed that he could not retrieve either his coat or I.D. without paying the school \$5.00. Within the next week, D.W.1 paid \$5.00 twice to the school but the school refused to return his property.

100. On or about November 22, 2005, one week after the coat was taken, Dean Bodega informed D.W.1 that he could retrieve his coat at Exit 10 of the school. When David arrived at Exit 10, there were a group of other students also awaiting the return of their coats.

101. Dean Bodega met the students and informed them that they would not be getting their coats back. All the students left that day without their coats.

102. When D.W.1 returned to school the next day to retrieve his coat, the security guard refused to let him enter. D.W.1 was told that he could not get his coat back.

103. D.W.1 returned the following school day – after a four-day weekend - at which point he was told that the school had lost his coat.

104. D.W.2 first enrolled at Boys and Girls in September of 2004.

105. On or about April 2005, D.W.2 was subject to partial day exclusion where he was only allowed to attend school for five periods per day.

106. For the first two weeks he was subject to the partial day exclusion, he was forced to sit in the school auditorium with other students. He was offered handouts and worksheets but no substantive instruction.

107. For the remainder of the 2004-2005 D.W.2 remained on the five-periods-per-day schedule.

108. D.W.2 has an IEP that recommends that he receive resource room and counseling. D.W.2 never received those services.

109. D.W.2 did not receive any credits for the 2004-2005 school year.

110. When D.W.2 and N.W. returned to Boys and Girls in September 2005, Mr. Philpotts informed them that D.W.2 could no longer attend Boys and Girls because he was 17-years-old and had earned no credits.

111. Thus, D.W.2 remained out of school since February 2005.

112. Plaintiffs' attorneys notified Defendants on October 12, 2005 and again on October 18, 2005 of D.W.2's name, date of birth and that D.W.2 was out of school.

113. D.W.2 was finally enrolled in Cobble Hill High School on or about November 18, 2005.

H.G. and R.H.

114. H.G. is the parent of R.H., a 16-year-old student who is on the register at Boys and Girls. R.H. was born on October 29, 1988.

115.R.H. first attempted to attend Boys and Girls in September of 2004. Boys and Girls refused to permit him to attend. Boys and Girls attempted to transfer him to the New Beginnings program, although he remained on the register at Boys and Girls.

116.H.G. spoke with Mr. Philpotts, who eventually agreed to enroll R.H. but would not allow R.H. to attend regular classes and, instead, subject him to exclusion by placing him in the auditorium (AAIP) all day.

117.Upon information and belief, R.H. did not receive any grades or credits for the work he completed in the auditorium.

118.On October 5, 2004 R.H. arrived at school past 7:30 a.m. and was denied access to the school. When R.H. persisted in asking to be let into the school building, he was excluded from Boys and Girls for over a week. At that point, H.G. filed a complaint with the Regional office at which point R.H. was permitted to return to Boys and Girls and was again placed in the auditorium program.

119.From September 2005 to October 19, 2005, R.H. was subject to a partial day exclusion by way of his placement in what Boys and Girls calls the "Leadership Academy" in which he was only permitted to attend school from 7:10 a.m. to 11:10 a.m. every day. Since October 19, 2005, R.H. has been accepted to and enrolled in Brownsville Academy with the assistance of Plaintiffs' counsel.

S.L. and N.L.

120.S.L. is the mother of N.L., is a 17-year old student who attended Boys and Girls. N.L. was born on March 25, 1988.

121.N.L. first enrolled at Boys and Girls in September 2005. Immediately upon enrollment, N.L. was informed by Ms. Lewis, a school official, that the school did not want her and that she would be discharged to a GED program in February 2006. N.L. was immediately placed in the AAIP.

122.While in the AAIP, N.L. was forced to arrive at school at 7:30am and be dismissed at 10:30am. She did not receive textbooks and instead was given handouts and worksheets that lacked any substantive academic instruction in any required subjects, and would not prepare her for a diploma.

123.Plaintiffs' counsel notified Defendants of N.L.'s name and date of birth on October 18, 2005. N.L. remained in the AAIP program until October 25, 2005 when she enrolled in Pacific High School.

L.H.

124.L.H. is a 21-year old student with a disability who attended Boys and Girls. L.H. was born on June 3, 1984.

125.Upon information and belief, L.H. first enrolled at Boys and Girls as a 9th grader in 1999. Within a few months of her first year, L.H. was placed on a modified schedule where she was only permitted to attend school for five periods per day. She remained on this schedule for the remainder of the 1999-2000 academic year.

126.At the end of 9th grade, L.H. asked school officials if she could attend summer school as well as evening school to make up credits. She was informed that no students who were on the shortened day schedules were allowed to attend evening school. Eventually, L.H. was permitted to attend summer school but not given any credits.

127.L.H. returned to Boys and Girls in September 2000. L.H. requested that she be given a full schedule. Boys and Girls refused to do so and she was placed on a schedule of three to four periods per day.

128.While L.H. attended Boys and Girls, she had an IEP that mandated Special Education Teacher Support Services (“SETSS”). Her SETSS provider was aware of L.S.’s academic difficulties but L.S. was never offered additional services to assist her academically.

129.L.H. developed problems with attendance and was not achieving. She left Boys & Girls a few years ago. Her special education services were terminated and she was never offered any transition services or support for her failing performance and truancy.

130.Currently, L.H. is unemployed and has not received a diploma or GED.

Additional Students

131.In addition to the named Plaintiffs, Plaintiffs’ counsel has informed Defendants’ counsel of an additional twelve students who were, at the time of the filing of the Complaint in this action, placed on modified schedules at Boys and Girls.

CAUSES OF ACTION

Claims on Behalf of the Entire Class

FIRST CLAIM FOR RELIEF (against all Defendants): Denial of Property Interest without Due Process of Law in violation of 42 U.S.C. § 1983

132. By depriving the named Plaintiffs and members of the plaintiff class of educational services to which they are entitled without due process, Defendants have violated and continue to violate rights secured by the 14th Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF: Denial of Liberty Interest without Due Process of Law in violation of 42 U.S.C. § 1983

133. By depriving the named Plaintiffs and members of the plaintiff class of educational services to which they are entitled without due process, Defendants have violated and continue to violate rights secured by the 14th Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF: Violation of Substantive Due Process Rights in violation of 42 U.S.C. § 1983

134. By depriving the named Plaintiffs and members of the plaintiff class of educational services to which they are entitled Defendants have violated and continue to violate rights secured by the 14th Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF: Denial of Right to Education

By depriving the named Plaintiffs and members of the plaintiff class of educational services to which they are entitled Defendants have violated and continue to violate rights secured by the New York Constitution, the New York Education Law and the Education Law's implementing regulations.

Claims on Behalf of Subclass A: Children with Disabilities

FIFTH CLAIM FOR RELIEF: Violation of § 1983 Based on Denial of Rights Under the IDEA, ADA, Section 504 of the Rehabilitation Act of 1973, and State Law

135. By depriving the named Plaintiffs and all subclass members with disabilities of educational services to which they are entitled under the IDEA, New York State law promulgated under the IDEA, the ADA, and Section 504 of the Rehabilitation Act, Defendants have violated Plaintiffs' rights secured by federal law in violation of 42 U.S.C. § 1983, and have denied Plaintiffs the opportunity to participate in or benefit from the aid, benefit, or service of educational services by reason of their disabilities, in violation of 42 U.S.C. § 12132 and 29 U.S.C. § 794.

Claims on Behalf of Subclass B: Youth Subject to Illegal Taking of Property

SIXTH CLAIM FOR RELIEF: Denial of Property Interest without Due Process of Law in violation of 42 U.S.C. § 1983

136. By depriving the named Plaintiffs and members of the plaintiff class of their property, including coats, without due process, Defendants have violated and continue to violate rights secured by the

14th Amendment to the United States Constitution.

RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a. Assume jurisdiction of this case;
- b. Issue a temporary restraining order directing Defendants to admit the named Plaintiffs to appropriate school placements immediately;
- c. Issue a preliminary injunction (a) restraining Defendants from violating the class members' constitutional rights and right to education under New York State law; (b) restraining Defendants from violating the rights of Subclass A members under the IDEA; (c) restraining Defendants from violating the rights of Subclass B members by taking their property in violation of their constitutional rights; (d) directing Defendants to immediately identify, notify and return all such property to the Subclass B members; (e) directing Defendants to refrain from illegally excluding other students; (f) directing Defendants to identify and issue notices to all Boys and Girls students who are currently on the register at school as well as those who have been on the register of Boys and Girls in the past three (3) years and who are no longer on the register for any reason other than graduation with a regular diploma in the past three (3) years by letter in appropriate languages, which will be drafted and approved by Plaintiffs' counsel similar in form to the notices this Court directed in the trilogy of push-out cases [Civ No. 03-0502] over which this Court has retained jurisdiction; (g) re-enroll or provide full-time schedules to all students who are entitled to them or offer meaningful transfer options for student who wish to transfer; and (h) provide remedial assistance to students who are entitled to it or who need it to re-engage in school after an illegal exclusion.
- d. Certify a class of youth who have been or will be excluded from Boys and Girls; a subclass of youth with disabilities who have been or will be excluded from Boys and Girls; and a subclass of youth who have been or will be subject to the illegal deprivation of property without due process.

- e. Issue a declaratory judgment that Defendants have violated Plaintiffs' rights as set forth above and enter an injunction restraining Defendants from (a) excluding class members from school without due process and denying them educational services to which they are entitled under law; (b) violating the rights of Subclass A members under the IDEA; (c) violating the rights of Subclass B members under the U.S. Constitution
- f. Enter a judgment
 - i. Requiring Defendants to change the policies and practices at Boys and Girls to ensure that students are not illegally excluded;
 - ii. Requiring Defendants to comply with all applicable federal and state laws that guarantee class and subclass members educational services and procedural due process;
 - iii. Requiring Defendants to design, to submit to Plaintiffs and the Court for approval, and to implement an effective plan to ensure that class members will be afforded the substantive educational and procedural protections to which they are entitled under federal, state and local law and not excluded from school in violation of their rights. The plan should include (a) expansion of legally adequate educational options and increased resources for education for class and subclass members; (b) training for all relevant personnel in Boys and Girls and the Superintendent's Office to ensure that they are knowledgeable about the mandates of due process and state and local law and policies that relate to the claims in question;
 - iv. Requiring Defendants to ensure that all written and other notices and procedures and policies that Defendants wish to utilize in connection with excluding students from Boys and Girls 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 and data concerning the implementation of the Order;

- vi. Appointing a special master or independent monitor to oversee and monitor Defendants' implementation of the requirements of this Order;
- vii. Retaining jurisdiction of this action for all purposes, including entry of such additional orders as may be necessary or proper; and
- viii. Directing Defendants to provide equitable relief to the named Plaintiffs and class members who were illegally excluded in the form of compensatory educational and support services and opportunities to earn additional credits;
- g. Enter a judgment awarding monetary damages in an amount to be determined by the Court to named Plaintiffs;
- h. Award to Plaintiffs their costs and attorneys fees; and
- i. Grant such other and further relief as may be appropriate.

Dated: December 13, 2005
New York, New York

Respectfully submitted,

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