

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

<p>J.G., by and through her parent and next friend, F.B., A.S.1 by and through his parent and next friend, V.S., J.S. by and through his parent and next friend, A.S.2, and A.M. by and through his parent and next friend, O.M., individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>RICHARD MILLS, in his official capacity as Commissioner of the New York State Education Department; JOEL KLEIN, in his official capacity as Chancellor of the New York City school District; New York City Board of Education; and New York City Department of Education,</p> <p style="text-align: center;">Defendants.</p>	<p>CV-04-5414 (CPS)</p> <p><u>CLASS ACTION COMPLAINT</u></p>
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PRELIMINARY STATEMENT

1. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and all other members of a class of youths aged 7-21 who have a history of involvement with the juvenile or adult court systems and who are entitled to education in New York City. All Plaintiffs and proposed class members share at least one central characteristic: upon being released from a court-ordered setting, they have been denied timely re-enrollment in school in their communities in New York City by the Defendants, who are charged with the responsibility of providing such services. As a result, Plaintiffs and class members have spent weeks and in some cases several months out of school or

warehoused in alternative settings where court-involved youth are segregated and that do not afford them minimally adequate educational services.

2. A court-ordered setting for juvenile delinquents and juvenile offenders (hereinafter “court-involved youth”) includes but is not limited to secure and non-secure detention operated by the Department of Juvenile Justice (DJJ), alternatives to detention (ATD) run by the New York City Department of Probation, placement facilities, group homes, reception centers and other settings for children in the custody of the Office of Children and Family Services (OCFS) in New York State (hereinafter “court-ordered setting”).

3. The plaintiff students sue for declaratory and injunctive relief based on the defendants’ violations of the United States Constitution’s guarantee of due process of law (via 42 U.S.C. §1983) and the New York State Constitution’s guarantee of a “sound basic education;” as well as rights to education under New York State law. Proposed class members with disabilities also bring this action under 42 U.S.C § 1983 for violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., as amended by Pub. Law No. 105-17 (1997); the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. §794, as well as New York State law requiring special education services and accommodations.

4. This case is being brought against Richard Mills, Commissioner of the New York State Education Department, in his official capacity (“State Defendant”) and Joel Klein, Chancellor of the New York Department of Education, in his official capacity, the New York City Department of Education and the New York City Board of

Education (“City Defendants”).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 20 U.S.C. § 1415(i)(2). This Court has supplemental jurisdiction over Plaintiffs' claims against defendants Joel Klein, in his official capacity as Chancellor of the New York City school district; the New York City Board of Education; and the New York City Department of Education, under 28 U.S.C. § 1367.

6. Venue is proper in the Eastern District of New York under 28 U.S.C. § 1391(b). The State and City Defendants maintain offices and/or facilities in the Eastern District of New York.

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

PARTIES

8. _____ Plaintiff F.B. is the mother of J.G., a child who lives in New York City and has attended the New York City public schools.

9. _____ Plaintiff V.S. is the mother of A.S.1, a child who lives in New York City and has attended the New York City public schools.

10. Plaintiff A.S.2 is the mother of J.S., a child with a disability who lives in New York City and has attended the New York City public schools.

11. Plaintiff O.M. is the mother of A.M., a child with a disability who lives in New York City and has attended the New York City public schools.

12. Defendant THE NEW YORK CITY DEPARTMENT OF EDUCATION (“Department”) is the newly constituted 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, including programs and services for students with disabilities and providing education to eligible students in New York City. It is a recipient of federal financial assistance.

13. 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 New York Education law including the power and duty to control and operate all academic and vocational senior high schools and middle schools in the city school district. Defendant Klein is sued in his official capacity.

14. Defendant THE NEW YORK CITY BOARD OF EDUCATION (“the Board of Education” or “the Board”) appears to have overlapping responsibility under New York State law for developing policies with respect to the administration and operation of the public schools in the City of New York, including programs and services for students with disabilities.

15. Defendant RICHARD MILLS is the Commissioner and Chief Executive Officer of the New York State Education Department (“NYSED”). In that capacity, he is responsible for providing education to residents of the State of New York up to age 21 or the receipt of a high school diploma and for complying with federal and state law and regulations concerning the education of students with disabilities and

nondisabled students. Defendant Mills is sued in his official capacity.

16. Defendants have performed the acts and omissions complained about under color of state law.

17. All Defendants have a responsibility to ensure that legally adequate education and due process is afforded to class members.

CLASS ACTION ALLEGATIONS

18. 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 Plaintiffs and class members, making appropriate relief as to the class as a whole.

Proposed Class Definition and Characteristics

19. The proposed class consists of court-involved youth (ages 7-21) who reside in New York City, who have been or will be discharged from court-ordered settings, and have not been or are not being provided access to appropriate educational services upon such discharge.

20. The class and subclasses are so numerous that joinder of all members is impracticable due to the potentially thousands of students who fall within this class and the subclasses.

21. More than approximately 5,200 students are released from court-ordered settings each year. According to statistics provided by the City Defendants, each year, approximately 4,000 court-involved youth are served through the City Defendants' Passages Academy, the City Defendants' school that is supposed to provide educational

services to students under sixteen years old who are in secure, non-secure and alternative to detention sites. Most young people enter and exit these sites within one year. In addition, approximately 1,200 students return to New York City from New York State Office of Children and Family Services (OCFS) residential custody each year. The average age of returning students is sixteen and the majority are in high school.

22. City Defendants also claim to provide instruction to youth at the Queens Outreach Haven, which is a modified adolescents' residential therapeutic community and non-secure detention center for girls, as well as at other court-ordered non-secure settings located in New York City. Those students in other settings may also be entering and exiting the court-ordered settings during the year in addition to the 5,200 students discussed above.

23. More than two-thirds of all students do not return to school upon release from court-ordered detention.

24. City Defendants also operate "transitional" programs to which court-involved youth are referred instead of going to regular schools, including but not limited to the Career Education Center and the Offsite Educational Services.

25. There are also students who are in OCFS custody who are located in New York City and are entitled to education from Defendants while in OCFS' New York City placement facilities or contract agencies and upon being released from those settings.

26. There are questions of law and fact in common between named Plaintiffs, F.B., J.G., A.S.1, V.S., J.S., A.S.2, A.M., O.M. and the members of the class they seek to represent, including but not limited to: whether Defendants have deprived

class members of a constitutionally protected property interest in their right to an education without due process of law; whether Defendants have deprived class members of a constitutionally protected liberty interest without due process of law; and whether City Defendants have violated class members' rights under New York State law by depriving them of the right to education upon their release from court-ordered settings.

27. Joinder of the class members is impracticable because the class is so large and fluid. Furthermore, joinder is also impracticable because large numbers of class members are without adequate economic resources to retain counsel. Requiring hundreds or thousands of class members to litigate their rights before this Court would impose a significant economic burden on the educational and judicial systems, as well as a substantial injustice upon children and parents too poor to obtain competent representation.

28. _____ Plaintiffs' claims are typical of those of the class and subclasses they seek to represent.

Proposed Subclass A Definition

29. Plaintiffs F.B., J.G.,A.S.1, V.S., J.S., A.S.2, A.M., O.M. also seek certification of Subclass A, comprised of those class members, with and without disabilities, who were previously denied legally adequate general and special education services while in court-ordered settings in New York City.

30. Subclass A is so numerous that joinder of all members is impracticable due to the potentially thousands of students who fall within this class.

31. Thousands of class members have been and will be deprived of minimally adequate education while in court-ordered settings in NYC.

32. There are questions of law and fact in common between named Plaintiffs, F.B., J.G., A.S.1, V.S., J.S., A.S.2, A.M., O.M. and the members of the subclass they seek to represent, including but not limited to: whether Defendants have deprived subclass members of a constitutionally protected property interest in their right to an education without due process of law while they were in court-ordered settings in New York City; whether Defendants have deprived class members of a constitutionally protected liberty interest without due process of law while they were in court-ordered settings in New York City; and whether City Defendants have violated class members' rights under New York State law by depriving them of the right to education while they were in court-ordered settings in New York City.

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

Proposed Subclass B Definition

34. Plaintiffs A.S.1, V.S., J.S., A.S.2, A.M., O.M. also seek certification of Subclass B, comprised of those members of the class who have disabilities who have been denied a free appropriate public education (FAPE) upon their discharge from a court-ordered setting.

35. Subclass B is so numerous that joinder of all members is impracticable due to the potentially thousands of students who fall within this class.

36. At least half, if not more, of class members have disabilities and would be entitled to a free appropriate public education under the IDEA.

37. There are questions of law or fact common to the named Plaintiffs A.S.1, V.S., J.S., A.S.2, A.M., O.M. and the members of the proposed subclass

comprised of youth exiting court-ordered settings who have disabilities. Common questions include but are not limited to: whether Defendants have violated the rights of the subclass members by failing to provide them with a FAPE under the IDEA and New York State law that is enforceable under the IDEA upon their discharge from a court-ordered setting; whether Defendants have violated the rights of the subclass members by failing to provide them with a FAPE under the IDEA and New York State law that is enforceable under the IDEA when they were in court-ordered settings in New York City; whether City defendants have violated the rights of the subclass members by failing to provide them with special and general education services to which they are entitled under New York State law upon their discharge from court-ordered settings; and whether Defendants' failure to provide the subclass members with a FAPE while in court-ordered settings and after discharge from those settings violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

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

All Plaintiffs Are Adequate Representatives of the Class and Subclasses

39. The named Plaintiffs will adequately represent and protect the interests of the class and the subclasses. Plaintiffs know of no conflict of interest among the class members.

40. Plaintiffs are represented by attorneys from Advocates for Children of New York (AFC), The Legal Aid Society (LAS) and Dewey Ballantine LLP.

41. Both AFC and Las are experienced in federal class action litigation and in matters relating to education, disability and civil rights law. They have sufficient

resources and will vigorously pursue this action in the interest of the class.

42. Dewey Ballantine has extensive experience in complex class action litigation and ample resources to serve as co-counsel in this matter. In recent years, the firm has represented individuals, organizations and classes in, among other things, actions relating to bilingual instruction in public schools, hiring and promotion practices in law enforcement agencies, policies relating to evictions from public housing and the impact upon affected neighborhoods of post-9/11 closings of streets to vehicular traffic and has acted as co-counsel in a variety of matters with other public interest organizations in New York City, including but not limited to The Legal Aid Society.

43. _____ In failing to discharge their duties to the Plaintiffs and to the plaintiff class and subclass members, Defendants have acted or refused to act on grounds generally applicable to the class, making final injunctive relief and corresponding declaratory relief appropriate with respect to the class as a whole.

LEGAL FRAMEWORK

Due Process

44. All Plaintiffs in the proposed class have a property right in their education under state law that is protected by the U.S. Constitution.

45. The state may not deprive Plaintiffs of “life, liberty, or property, without due process of law.” U.S.Const., Amdt. XIV, § 1.

46. Defendants may not, “acting under color of state law, deprive [Plaintiffs] of a right . . . secured by the Constitution or other laws of the United States.” 42 U.S.C. §1983.

47. Students in New York have both a liberty interest and a property

interest in education that is protected by the U.S. Constitution.

Right to Education and Supports for At-Risk Students in New York

48. The New York Constitution states that “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” N.Y. CONST. ART. XI §1. This provision guarantees every child residing in the State of New York a free public education and obligates the State to ensure that every such child receives a sound basic education.

49. 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 regular high school diploma, is entitled to attend a public school. N.Y. Educ. Law § 3202(1).

50. New York State Education Law 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.

51. Defendant Mills’ state education regulations spell out the very specific requirements for courses and exit examinations necessary for students to earn high school diplomas. The regulations also mandate 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 8.

52. _____ Students in grades 9 through 12 are entitled to receive Academic Intervention Services (AIS). Academic intervention services 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).

53. _____ In addition to affording students the right to attend school and receive instruction toward the Regents diploma, Defendant Mills’ regulations spell out a number of services to be provided to students if they are struggling academically, truant, having behavior problems, or otherwise at risk of academic failure.

54. New York State Education Law § 3602(32) entitles students who are truant or struggling academically the opportunity to receive 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. Defendant Mills has also promulgated regulations concerning ERSS.

Select New York State and City Laws and Regulations

55. Students who are of compulsory school age cannot be suspended or expelled from school unless they are disruptive or violent as defined by New York Education Law §3214. Section 3214 sets forth due process protections, including notice and the opportunity for a hearing and appeal, that must be provided to students and parents before they are suspended or expelled from school. City Defendants have adopted Chancellor’s Regulation A-443, which contains the procedures and standards for student suspensions and expulsions.

56. New York Education Law § 3214 also protects student of any age from being transferred from one school to another “involuntarily” without due process.

57. New York Education Law also prohibits school districts from dropping students from enrollment who are truant, without following certain notice and other due process procedures.

58. New York City Chancellor's Regulations mandate that each school is responsible for receiving pupils of school age who apply for admission and, as far as possible, determining their educational status and making adjustments to meet their educational needs. No applicant for admission to school is to be turned away, or sent to another school without carrying out the required procedures. Appropriate school placement should be arranged within five days. New York City Chancellor's Regulation A-101 (1.2) (emphasis added).

59. Under the New York City's Chancellor's Regulations A-101 (1.3), if a parent or guardian or agency social worker brings a student to a school for admission without appropriate documents, the principal is to admit the student and conduct an investigation to determine the student's previous school and status. The student shall attend class during the investigation. The new school will contact the previous school to obtain the student's records.

60. New York City Chancellor's Regulation A-101 (1.6) provides that students in the care of social welfare agencies and correctional agencies are to be admitted into schools in the same manner as other students.

61. New York City Chancellor's Regulation A-101 (7.1, 7.1.1, 7.1.2) state that students who return to the public schools from the care of the State, City, or private agencies are entitled to the most expeditious and appropriate educational placement available.

62. New York Education Law § 112 requires Defendant Mills to promulgate regulations mandating the cooperation of local school districts in facilitating the prompt enrollment of children who are released or conditionally released from residential facilities operated by or under contract with the New York State Office of Children and Family Services (OCFS). These regulations require Defendants to ensure that any youth presented for enrollment who is entitled to attend the schools of such district and who is released or conditionally released from a residential facility operated by or under contract with OCFS, among other agencies, is promptly enrolled and admitted to attendance in such district, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment. 8 N.Y.C.R.R. §100.2(ff)(1)(i). Defendant Mills' regulations further require that the board of education and the superintendent of schools of each school district ensure that the youth's educational records are requested from the school such student attended while in the residential facility. 8 N.Y.C.R.R. §100.2(ff)(1)(ii). The regulations also require each school district to designate one or more employees or representatives to facilitate the prompt enrollment of students who are released or conditionally released and whose duties shall include, but are not limited to, the receipt of student records and serving as a district contact person with residential facilities and State and local agencies. 8 N.Y.C.R.R. §100.2(ff)(2).

The Individuals with Disabilities Education Act

63. Plaintiffs A.S.1, J.S. and A.M. and those in Subclass B are children with disabilities under the IDEA.

64. Congress enacted the IDEA "to ensure that all children with

disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected." 20 U.S.C. §§1400(d)(1)(A), (B). The IDEA was specifically adopted to correct the historical exclusion of children with disabilities from public education. 20 U.S.C. § 1400(2)(C)(1997).

65. As recipients of funding under the IDEA, Defendants have the responsibility to "establish and maintain procedures . . . to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate education." 20 U.S.C. § 1415(a). New York Education Law § 4401 *et seq.*, regulations promulgated by the New York State Commissioner of Education published at N.Y. COMP. CODES R. & REGS. TIT. 8 §§ 200.1 and 200-1 and regulations promulgated by the Chancellor, Section 443 and 450, describe some of the Defendants' responsibilities concerning special education service delivery.

66. The IDEA's guarantee of FAPE includes "an appropriate preschool, elementary, or secondary school education provided in conformity with an individualized education program (IEP) required by § 1414(a)(5)" of the Act. 20 U.S.C. § 1401(a)(18). The IEP is the blueprint for a child's special education services. Even those youth who are legitimately suspended or expelled must be provided FAPE during periods of time when they are removed from school. 20 U.S.C. §1401(3)(B) (1997).

67. City Defendants are obligated to provide a free appropriate public education to every eligible child with a disability in New York City and to provide the

children's parents with the procedural protections of the IDEA.

68. Special education and related services include both "transition services" and "vocational education." 34 C.F.R. §§300.29, 300.26(a)(2)(iii).

69. The IDEA provides a web of protections that are designed to ensure that children with disabilities are not excluded from school and are not subject to discipline for behavior stemming from their disability. For example, the IDEA contains extensive due process protections for parents, including notice prior to any proposal to change a child's placement (20 U.S.C. §§1415(b)(3) and (c)(i)-(j)), notice of procedural due process rights (20 U.S.C. §1415(d)), the right to insist on an immediate return of a child to his/her school pending a resolution of any dispute over the child's placement and in most disciplinary situations (20 U.S.C. §1415(j)), and access to effective and timely due process proceedings (20 U.S.C. §1415(f)). The IDEA also contains extensive provisions governing the rights of students to continue to receive FAPE.

70. Students who are court-involved and who are referred to court-ordered settings are entitled to FAPE under the IDEA and have the right to the IDEA's due process protections.

71. The IDEA permits disabled children to vindicate their educational rights through other statutes, including 42 U.S.C. § 1983. See 20 U.S.C. §1415(l).

72. Under the IDEA, the State Education Agency (SEA) is the party ultimately responsible for the provision of FAPE. 20 U.S.C. §§ 1412(11); 34 CFR §300.600. In New York State, Defendant Mills' NYSED is the SEA.

73. The IDEA conditions federal assistance upon an SEA's demonstration that, *inter alia*, it has adopted policies and procedures to ensure that all children with

disabilities receive FAPE. 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.121-300.122.

The SEA has a duty of general supervision over educational programs for children with disabilities and must ensure that these educational programs meet the SEA's educational standards. 20 U.S.C. §§ 1412 (a)(11)(A)(ii)(I), (a)(11)(A)(ii)(II).

74. The SEA has a duty of general supervision over educational programs for children with disabilities and must ensure that these educational programs meet the SEA's educational standards. 20 U.S.C. § 1412 (a)(11)(A)(ii)(I), (a)(11)(A)(ii)(II).

75. Under the IDEA, SEAs are required to provide methods to enforce Local Educational Agency (LEA) compliance, including the development and implementation of an adequate monitoring and compliance system that is reasonably calculated to detect IDEA violations and ensure that violations are corrected. 20 U.S.C. § 1413(d).

76. The SEA must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the SEA, in order to ensure that all services that are needed to ensure a FAPE are provided, including the provision of such services during the pendency of a dispute. 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.142.

77. _____ If an LEA, such as a school district, is unable or unwilling to provide FAPE, the SEA must do so directly, utilizing funds that would otherwise be available to the LEA for that child. 20 U.S.C. § 1413(h)(1)(B). The LEA for children with disabilities in New York City is the New York City Department of Education.

78. _____ Upon information and belief, the SEA and LEA here have been on notice of the violations asserted by Plaintiffs.

Americans with Disabilities Act

79. Plaintiffs A.S.1, J.S. and A.M. and those in proposed subclass B are disabled persons covered by the requirements of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. (ADA).

80. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

81. A “public entity” is a state or local government department, agency, district, or other instrumentality. 42 U.S.C. § 12131(1). The New York State Education Department and the New York City Department of Education are public entities.

82. The ADA defines the term “disability” as (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(2).

83. The term “major life activities” includes the ability to learn, concentrate, think, interact with other people, care for oneself, perform manual tasks, and other activities that are of central importance to most people’s daily lives.

84. A “qualified individual with a disability” means “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

85. Federal regulations implementing Title II of the ADA detail the

specific prohibitions on discrimination that are embodied in Title II. Prohibitions that are pertinent here include but are not limited to: a public entity may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

Rehabilitation Act

86. Students A.S.1, J.S. and A.M. and those in proposed Subclass B are disabled persons covered by the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 (Section 504).

87. Section 504 provides, in pertinent part, that “[n]o otherwise qualified individual with handicaps in the United States ... shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination through any program or activity receiving federal assistance.” 29 U.S.C. § 794.

FACTS COMMON TO THE CLASS

Facts Pertaining to the Entire Class

88. Upon information and belief, the claims alleged by the Plaintiffs in this action are of a system-wide nature.

89. Court-involved youth face long-standing barriers to re-enrolling in school in the community upon their discharge from court-ordered settings and obtaining adequate education while in court-ordered settings.

90. Schools in the community often refuse to admit class members upon their release from court-ordered settings.

91. Defendants have not ensured that schools do not refuse to admit

students merely because of their history of court involvement.

92. Defendants have not provided parents and students with adequate notice of their rights and an explanation of the procedure by which they can return to community schools.

93. Defendants do not provide Plaintiffs with any due process prior to depriving them of educational services.

94. Most if not all of the class members have conditions of probation, parole or release that require them to attend school, and they are at risk of incarceration, placement or remand due to Defendants' conduct.

95. Class members have remained incarcerated or in alternative to detention programs or OCFS placement merely because the City Defendants have not provided them with a timely and adequate school placement.

96. Class members are being deprived of education based on their status as court-involved youth.

97. Defendants lack an effective policy and procedures to effectuate the timely and effective transition of New York City students when they are released from all court-ordered settings in New York State.

98. Defendants do not have a system for tracking and monitoring the enrollment and transfer of youth returning to schools or transferring from court-ordered settings or even from the DOE's own correctional education programs.

99. Defendants acknowledge that currently they do not know whether the thousands of court-involved children being discharged from court-ordered settings every year attend school upon their discharge. Defendants acknowledge that they have the

ability to track these students but have failed to do so.

100. Defendants have failed to train, supervise and monitor persons responsible for delivering educational services and facilitating the re-enrollment and transfer of Plaintiffs and class members.

101. The City Defendants do not undertake sufficient discharge and transition planning for youth who are returning to community schools from court-ordered settings.

102. Defendants must also provide remedial measures to those class members who are harmed and will continue to be harmed due to the current policies and practices.

103. Instead of bringing centralized resources and structure to bear on this problem, Defendants have continued to allow each region, district and school involved in the education of court-involved youth to operate independently and without sufficient oversight.

104. In particular, Defendants must adopt a system of ensuring notice of rights to students and parents and due process for students; Defendants must adopt a transition planning process for all youth, including but not limited to records transfers, special education, instructional services, academic intervention and support services, oversight and monitoring, development of more appropriate school programs, a policy for credit transfers and tracking of these youth, and training of staff.

105. Even in City Defendants' own correctional education settings, no discharge or transition plans are made just prior to or after the time a student is released from those settings.

106. Defendants' correctional education settings do not get adequate records from the students' sending schools; they do not have access to transcripts or the children's existing educational programs or their cumulative records.

107. Evaluations conducted in Defendants' correctional education settings are not done appropriately or conducted by adequately trained staff.

108. The correctional education settings do not create or maintain adequate records to reflect work accomplished by students such that a school to which a student is released will be able to afford the student credit for work accomplished in the correctional education setting.

109. Defendants do not have sufficient policies and procedures to ensure that academic work, credits and records transfer between correctional education settings and the City's schools.

110. Defendants do not have a policy to ensure that students who transition back into schools in the middle of a semester can get credits for work completed during the first part of the semester when students move between community schools and correctional education settings.

111. City Defendants operate transitional education programs for some youth who are leaving court-ordered settings but who are not being permitted to re-enroll in regular schools based on their status of being court-involved.

112. In many if not all of the transitional programs students are not able to earn credits and receive adequate instruction.

113. The City Defendants do not maintain adequate educational programs for youth who are leaving court-ordered facilities, many of whom are significantly

academically delayed and/or have disabilities.

114. There is not adequate discharge or transition planning, IEP development or educational service delivery in correctional education settings operated by the City Defendants. As a result, class members with disabilities are denied FAPE when they are not provided a placement upon release from a correctional education setting.

115. Students with disabilities are not being provided FAPE in transitional education settings. In significant numbers of cases the schools in the community will simply refuse to re-enroll students when they return from a correctional education setting. In other cases, no appropriate school placement is offered.

116. Upon information and belief, class members are placed at risk of placement, incarceration and remand due to Defendants' failure to ensure that they are timely enrolled and are receiving adequate education services and supports in correctional education settings.

Facts Pertaining to Defendants' Knowledge of the Problems Complained Of

117. Defendants and their predecessors have been aware of these problems since at least the 1990's.

118. City Defendants formerly had a regulation -- Chancellor's Regulation A-16--- containing a procedure for re-enrollment of children who were returning from agency care, including OCFS. That regulation was, however, withdrawn by the former Chancellor Harold Levy and no new regulation or policy was put in its place.

119. In 2001, Defendants allegedly formed the "Committee on Court Involved Students" for the stated purpose of working "collaboratively to identify barriers

to education for students leaving custody and remove those barriers” with juvenile justice officials.

120. At the time this Committee was formed, counsel for Plaintiffs requested that they be invited to the Committee and raised concerns about the problems complained of in this action. However, counsel were told that they were not welcome to participate in this effort. Defendants indicated that they were working on the problems of court-involved youth and would be issuing policy changes.

121. In or about 2002-2003, City Defendants undertook some changes to their education programs for court-involved youth. The City Defendants’ Passages Academy took over the responsibility for providing education to detained youth and youth who were in alternative to detention programs. Previously, education of some of those youth were supposed to be provided by Defendants’ “Project Y.O.U.”

122. Defendants did not maintain any student records for those students who attended schools through Project Y.O.U. and Passages sites prior to the summer of 2002. As a result, court-involved youth who spent time in one of those programs received no credit for work completed there, to the extent any instruction was provided in that setting.

123. Defendants also opened a special school for court-involved youth and a pilot program for youth in Manhattan designed to facilitate transition of court-involved youth to school.

124. Although City Defendants made these changes, court-involved youth continued to be injured by the failure to provide them with education and timely re-enroll them in adequate educational programs.

125. On or about April 28, 2004, counsel sent City Defendants a letter outlining the problems raised by the Plaintiffs herein and providing Defendants with a clear request for relief for our clients.

126. On or about October 6, 2004 Plaintiffs' counsel sent a letter to State Defendant, outlining the problems raised by the Plaintiffs in this lawsuit and providing the State Defendant with a clear request for relief. State Defendant has not contacted Plaintiffs' counsel to discuss or try to resolve these problems.

127. Since Plaintiffs' counsel sent a letter to City Defendants, City Defendants have taken some voluntary measures to try to address some of the problems.

128. For example, City Defendants developed a dual register program for those youth in Passages Academy that allows youth to remain on the register of their sending school while they are in Passages Academy. City Defendants are also negotiating a Memorandum of Understanding with OCFS.

129. While some of these measures may be beneficial, they are not sufficient to address the long-standing problems raised herein. Other steps taken by Defendants will continue to result in violations of class members' rights.

Facts Pertaining to Subclass A

130. Defendants have not allocated sufficient resources to ensure that the youth in court-ordered settings in New York City are offered adequate regular or special education services.

131. The City Defendants' correctional education settings do not enable all youth to earn credits or complete work necessary for the purposes of graduation or promotion, and do not afford them the opportunity to obtain instruction in the subjects

required by State and City Defendants. For example, Passages Academy only offers limited curricula including 9th grade classes, some 8th grade classes and remedial literacy. Moreover, children from elementary through high school could be placed together in the same classes.

132. The City Defendants' correctional education settings are not provided with adequate educational records from the sending schools and do not have access to adequate student information through the central computer systems to ensure delivery of adequate services or transition.

133. Upon information and belief, class members are placed at risk of placement, incarceration and remand due to Defendants' failure to ensure that they are receiving adequate special education services and supports in correctional education settings.

134. The State Defendant specifically has failed to monitor and supervise the Department of Education with regard to education of students transitioning from court-ordered settings, provision of education to students who return and provision of education in correctional education settings in New York City.

135. The State Defendant has failed to ensure that the City Defendants are providing instruction and educational services sufficient for class members to obtain a sound basic education.

136. The State and City Defendants have failed to follow their own policies and procedures that apply to the educational services and procedures that should be afforded to class members while in court-ordered settings.

Facts Pertaining to Subclass B

137. Research studies have shown that youth with disabilities are significantly over-represented in the court-involved youth population.

138. The federal Office of Juvenile Justice and Delinquency Prevention has issued a number of bulletins in the past few years highlighting the problems faced by court-involved youth with disabilities. Some studies have shown that up to 70% of court-involved youth have identified or unidentified disabilities.

139. No public study has been issued in New York City with specific statistics of the number of court-involved youth with disabilities in New York City, but estimates from City Defendants have ranged from 30-40% to higher.

140. Court-involved youth with disabilities and their parents have certain procedural and substantive rights under the IDEA and the right to a FAPE while they are in court-ordered settings and upon their release from court-ordered settings. They are also entitled to Transition Services. Their parents are mandated participants in the planning process for their education

141. The Defendants have denied and are continuing to deny class members with disabilities FAPE and their rights under the IDEA upon their release from court-ordered settings and while they are in court-ordered settings in New York City.

142. The Defendants have failed to ensure the class members with disabilities and their parents are provided any of the procedural protections of the IDEA such that they are evincing a wholesale failure to follow every provision of the IDEA.

143. Defendants routinely refuse to implement IEPs created in correctional education settings, including City Defendants' own correctional education settings, upon

students' return to community schools, leading to further delays in student enrollment and denial of FAPE.

144. The Defendants do not follow legally adequate procedures required by the IDEA and Section 504 with regard to the referral, evaluation, IEP development and placement and provision of transition services for students leaving court-ordered settings and for those students in court-ordered settings in New York City. As a result, class members with disabilities are denied FAPE and they and their parents are deprived of their procedural rights under IDEA.

145. Defendants have not allocated sufficient resources to ensure that the class members with disabilities receive FAPE while in court-ordered settings in New York City and upon their release from those settings.

146. Class members with disabilities are placed at risk of placement, incarceration and remand due to Defendants' failure to ensure that they are receiving adequate special education services and supports in correctional education settings.

147. There are more than twenty-five impartial hearing decisions issued in the past few years on behalf of court-involved youth highlighting these failures.

148. Both City and State Defendants are aware of these decisions and of the fact that the court-involved youth in subclass B are not being provided FAPE and that the youth and their parents are being denied their rights generally under the IDEA.

149. The State Defendants have also failed to monitor and supervise the City Defendants with regard to the provision of special education services to the court-ordered youth in subclass B.

150. The State Defendants have failed to ensure interagency coordination

necessary to provide FAPE to class members with disabilities.

FACTUAL ALLEGATIONS OF THE INDIVIDUAL PLAINTIFFS

151. _____ All Plaintiffs have been harmed by Defendants' conduct.

F.B. and J.G.

152. _____ Plaintiff F.B. is the mother of J.G., a 15-year-old court-involved student. J.G. was born on May 14, 1989.

153. _____ Starting in February 2003, J.G. attended the City Defendants' Passages Academy, a correctional educational setting of City Defendants, for approximately seven months. J.G. was denied appropriate educational services while a student at Passages Academy.

154. _____ After fifteen months, J.G. was released from a placement with an OCFS contract agency and returned to New York City on or about October 31, 2004. Upon her return, she was denied an appropriate school placement in violation of law and was not given notice or due process prior to being denied access to school.

155. _____ Despite numerous attempts by F.B. and J.G. to obtain a school placement, J.G. was denied the right to re-enroll in school.

156. _____ F.B. and J.G. attended multiple meetings with a placement officer at the Region 9 Learning Support Center, and after approximately three weeks were given papers for J.G. to enroll at one of City Defendants' high schools. However, a representative of that school told J.G. to go back to the Region 9 Learning Support Center for additional papers. When J.G. and F.B. later returned to the high school with the additional paperwork, they were told that J.G. could not be admitted because she had a record.

157. Neither F.B. nor J.G. has been contacted since then by anyone at the Department of Education. J.G. has missed over one month of classes and remains out of school to date. Neither F.B. nor J.G. received adequate due process prior to being deprived of services.

V.S. and A.S.1

158. Plaintiff V.S. is the mother of A.S.1, a 15-year-old court-involved special education student. A.S.1 was born on May 31, 1989.

159. In March 2004, A.S.1 resided for several weeks at a New York City Department of Juvenile Justice facility, where he attended the City Defendants' Passages Academy, a correctional educational setting. A.S.1 was denied appropriate educational services while a student at Passages Academy.

160. A.S.1 was then placed at an OCFS facility, from which he was released to return to New York City on or about November 9, 2004. Upon his return, A.S.1 was denied an appropriate school placement in violation of law and was not given notice or due process prior to being denied access to school.

161. _____ Despite numerous attempts by V.S. and A.S.1 to obtain a school placement, A.S.1 was denied the right to re-enroll in an appropriate school placement.

162. The day after A.S.1 came back, V.S. and A.S.1 met with a placement officer at the Region 2 Learning Support Center. V.S. asked that A.S.1 be allowed to return to the school he had attended in spring 2004, but was told there was no more room there, and that they should return home and wait for a placement offer. While waiting, V.S. enrolled A.S.1 at an alternative school on the suggestion of an OCFS worker because A.S.1 remained out of school and thus was at risk of having his release revoked.

The alternative school is not an appropriate setting, however, as it does not have special education services.

163. _____ One week later, V.S. received paperwork directing her to enroll A.S.1 at one of City Defendants' high schools. She brought him there and they filled out paperwork and were told A.S.1 would receive a full program card the following day. The next day, however, they were given a letter stating that he could not attend that high school because there was no room for A.S.1 there.

164. Neither V.S. nor A.S.1 has been contacted since then by anyone at the Department of Education. A.S.1 has missed a month of classes and remains in an inappropriate educational setting at this time. Neither V.S. nor A.S.1 received adequate due process prior to being deprived of services.

A.S.2 and J.S.

165. Plaintiff A.S.2 is the mother of J.S., a 16-year-old court-involved special education student. J.S. was born on September 5, 1988.

166. _____ J.S. attended Alternative to Detention (ATD) and other Passages Academy sites on and off during the 2002-03 and the 2003-04 school year. J.S. was denied appropriate educational services while a student at the City Defendants' Passages Academy.

167. _____ J.S. then resided at an OCFS facility, from which he was released to return to New York City on or about November 9, 2004. Upon his return, J.S. was denied an appropriate school placement in violation of law and was not given notice or due process prior to being denied access to school.

168. Despite numerous attempts by A.S.2 and J.S. to obtain a school placement, J.S. was denied the right to re-enroll in school.

169. A.S.2 and J.S. went to the Region 2 Learning Support Center and were sent by a placement officer there to one of City Defendants' high schools to enroll. They went to the high school for three days in November 2004 to try to enroll J.S. Staff at the school repeatedly told A.S. and J.S. that the school was not accepting any students from OCFS facilities because they were receiving too many of these type of students.

170. J.S. has missed over one month of classes and remains out of school on the date of this Complaint. Neither V.S. nor A.S.2 received adequate due process prior to being deprived of services. The City Defendants have not offered or provided compensatory services to J.S. for the instruction missed.

O.M. and A.M.

171. Plaintiff O.M. is the mother of A.M., an 18-year-old court-involved special education student. A.M. was born on November 14, 1986.

172. After A.M. was discharged from an OCFS facility in or about June 2003, A.M. attended a Career Education Center (CEC), a correctional educational setting of City Defendants, for about six months from June to December 2003. A.M. was denied appropriate educational services while a student at the CEC.

173. A.M. then resided at an OCFS facility, from which he was released to return to New York City on or about on October 7, 2004. He had accumulated over 30 credits, enough to graduate from high school with one more year of instruction. Upon his return, A.M. was denied an appropriate school placement in violation of law and was not given notice or due process prior to being denied access to school.

174. _____ Despite numerous attempts by O.M. and A.M. to obtain a school placement, A.M. was denied the right to re-enroll in school.

175. Before A.M.'s release, he came to New York City for a home visit to prepare for his return. On September 29, 2004, O.M. and A.M. went to one of City Defendants' Enrollment Centers to obtain a school placement and were given a placement letter assigning A.M. to one of City Defendants' high schools. The same day, they went to the high school to enroll and were told to return with A.M.'s IEP on October 7. When O.M. and A.M. returned to the school on October 7, 2004, staff there told them that A.M. couldn't attend there because they didn't live in Region 1, and sent them to the Region 2 Learning Support Center. At the Region 2 Learning Support Center, O.M. and A.M. were told that A.M.'s evaluations were outdated and were sent to the Region 2 Committee on Special Education (CSE). At the CSE, they were told that evaluations would be scheduled soon and no placement was offered to A.M. In late October 2004, O.M. and A.M. were sent to one of City Defendants' alternative high schools. A.M. attended for several days but was then told by the principal that the school did not have a program to meet his needs and that he could not attend there.

176. On November 18, 2004, Region 2 sent A.M. a placement letter for another of City Defendants' high schools. However, Region 2 personnel repeatedly told O.M.'s counsel, Advocates for Children, that A.M. could not attend the high school as staff there did not want any more students who had come from OCFS facilities. When A.M. tried to enroll at the high school, he was repeatedly turned away. On November 24, 2004, A.M. and O.M., through counsel AFC, filed a special education due process

hearing request on A.M.'s behalf requesting, *inter alia*, compensatory services for the approximately two months of instruction he had missed.

177. A.M. has missed over two months of instruction to date and remains out of school on the date of this Complaint. Neither O.M. nor A.M. received adequate due process prior to being deprived of services. The City Defendants have not offered or provided compensatory services to A.M. for the instruction missed.

PLAINTIFFS ARE NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES

178. Class members are being irreparably harmed, in that they are being denied access to school and not receiving educational services to which they are entitled.

179. Plaintiffs are not mandated to exhaust administrative remedies for the following reasons.

180. No adequate administrative remedy exists with regard to class members.

181. Class members are not generally being provided adequate notice of their rights. Thus, if there were administrative remedies available generally, they would be excused in light of the fact that class members did not and do not receive notice of such procedures.

182. In addition, class members with disabilities are not required to exhaust the administrative hearing process prior to seeking relief here.

183. The allegations set forth in this complaint are systemic. As such, they cannot be effectively remedied through an administrative process, which would focus on one child a time and cannot result in class wide relief or grant system-wide relief.

184. In addition, children with disabilities are not required to pursue administrative remedies before seeking to be restored to their stay-put or pendency placements in school.

185. Children are being excluded or transferred informally and not provided adequate or timely notice of their rights to protections and administrative remedies. As such, since they are not receiving notice, they should not be held to the exhaustion requirement.

186. The administrative hearing process for special education students is not proceeding quickly enough to ensure that children are not suffering irreparable harm by continuing to be excluded for weeks or months.

187. Class members cannot get the relief they seek through the administrative process.

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

188. All Plaintiffs and members of the class repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by depriving Plaintiffs and members of the plaintiff class of educational services to which they are entitled upon their release from court-ordered settings, 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 (against all Defendants): Denial of Liberty Interest without Due Process of Law

189. All Plaintiffs and class members repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by depriving Plaintiffs and members of the plaintiff class of educational services to which they are entitled upon their release from court-ordered settings, 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 (against the City Defendants): Denial of Right to Education

190. All Plaintiffs and class members repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that depriving Plaintiffs and members of the plaintiff class of educational services to which they are entitled upon their release from court-ordered settings, the City defendant has violated and continues 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

FOURTH CLAIM FOR RELIEF (against all Defendants): Denial of Property Interest without Due Process of Law

191. All Plaintiffs and members of the class repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by depriving Plaintiffs and members of the plaintiff class of educational services to which they are entitled while in court-ordered settings in New York City, without due process, Defendants have violated and continue to violate rights secured by the 14th Amendment to the United States Constitution.

FIFTH CLAIM FOR RELIEF (against all Defendants): Denial of Liberty Interest without Due Process of Law

192. All Plaintiffs and class members repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by depriving Plaintiffs and members of the plaintiff class of educational services to which they are entitled while in court-ordered settings in New York City, without due process, Defendants have violated and continue to violate rights secured by the 14th Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF (against City Defendants): Violation of State Law

193. Plaintiffs repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by failing to provide F.B., J.G., A.S.1, V.S., J.S., A.S.2, A.M., O.M. and all members of proposed plaintiff subclass A with due process of law and educational services to which they are entitled while in court-ordered settings New York City, Defendants Klein, New York City Department of Education and New York City Board of Education violate the New York State Constitution and New York Education Law and regulations.

Claims on Behalf of Subclass B

SEVENTH CLAIM FOR RELIEF (against City and State Defendants): Violation of IDEA, ADA, Section 504 of the Rehabilitation Act of 1973, and State Law

194. Plaintiffs A.S.1, V.S., J.S., A.S.2, A.M., O.M. and all subclass B members repeat and reallege paragraphs 1 through 187 as if fully set forth herein and further allege that by depriving Plaintiffs 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 while they are in court-ordered settings and after they are discharged from court-ordered settings, 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.

Claim on Behalf of Subclasses A and B

**EIGHTH CLAIM FOR RELIEF (against State Defendants):
Violation of IDEA – for both subclasses**

195. Plaintiffs A.S.1, V.S., J.S., A.S.2, A.M., O.M. and all subclass B members repeat and reallege paragraphs 1 through 187 as if fully set forth herein and allege that by failing to monitor and oversee the City Defendants and provide sufficient resources to them to ensure that subclass members' rights are enforced under the IDEA and New York State law promulgated thereunder, Defendants have violated Plaintiffs' rights secured by federal law in violation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF

196. WHEREFORE, Plaintiffs request that this Court:
- a. Assume jurisdiction of this action;
 - b. Certify a class of court-involved youth (ages 7-21) who reside in New York City, who have been or are will be discharged from court-ordered settings, and have not been or are not being provided access to appropriate educational services upon discharge;
 - c. Certify Subclass A, comprised of those class members, with

and without disabilities, who were previously denied legally adequate education services while in court-ordered settings in New York City;

d. Certify Subclass B, comprised of those members of the class who have disabilities who have been denied a free appropriate public education (FAPE) upon their release from a court-ordered setting;

e. Adjudge and declare that Defendants' actions, omissions, policies and practices of (1) denying access to education to class members when they leave court-ordered settings; and (2) denying subclass A members educational services while in court-ordered settings in New York City violates rights guaranteed to Plaintiffs and members of the class they seek to represent by the Fourteenth Amendment to the United States Constitution;

f. Preliminarily and permanently enjoin Defendants, their agents, employees, successors in office and assignees from subjecting Plaintiffs and the proposed class and subclasses to the illegal policies, practices, omissions and conditions described above;

g. Adjudge and declare that City Defendants' actions, omissions, policies and practices of (1) denying access to education to class members when they leave court-ordered settings; and (2) denying subclass A members educational services while in court-ordered settings in New York City violates rights guaranteed to Plaintiffs and members of the class they seek to represent under New York State law;

h. Adjudge and declare that City Defendants' actions, omissions,

policies and practices of denying access to FAPE to subclass B members and procedural safeguards to their parents when they leave court-ordered settings and while in court-ordered settings in New York City violates rights guaranteed to Plaintiffs and members of the subclass they seek under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act;

i. Adjudge and declare that State Defendants' actions, omissions, policies and practices of failing to (i) monitor and supervise the City Defendants with regard to implementing the IDEA and providing FAPE to subclass B members; and (2) ensure inter-agency coordination to ensure FAPE to subclass B members, violates the rights of subclass B members under the IDEA and New York State law implemented pursuant to the IDEA;

j. Order Defendants to design and implement a plan of correction that will ensure that Plaintiffs' rights are protected that will include but not be limited to the following elements: (i) mechanisms to ensure that class members are re-enrolled and admitted promptly in appropriate schools upon their discharge, with school records and credits transferred, when they leave juvenile or criminal justice system-related school settings; (ii) mechanisms to ensure that all class members are provided adequate notice of their rights and a process by which to challenge deprivations and exclusions; (iii) mechanisms to ensure that members of subclass A are afforded all of the substantive and procedural rights

afforded to them under federal and state law; (iv) the creation of new programs or improvement of existing programs to ensure that legally adequate educational services are provided to all members of the class; (v) the creation of adequate educational programs and schools to which Plaintiffs can transition upon their release; (vi) mechanisms to ensure the adequate inter-agency coordination necessary to protect the rights of class members.; (vii) resources necessary to implement the plan.

i. This plan should include but not be limited to the procedures Defendants will implement to ensure Defendants come into full compliance with the Court's Order; the persons directly accountable, respectively, ensuring the successful implementation of each provision of the plan; the additional resources that will be allocated and disbursed to bring Defendants into full compliance with the Court's Order; and milestones and target dates used to hold Defendants accountable to this Court;

k. Order Defendants to design and implement a remedial plan that (i) ensures that all class members are identified and offered the opportunity to re-enroll in school; (ii) contains compensatory educational services and other equitable relief to make up for deprivations of educational services caused by Defendants' conduct; and (iii) allocates resources necessary to implement the plan;

l. Order Defendants to submit detailed monthly compliance reports to the Court, with copies to Plaintiffs' counsel, containing

information on the status of the implementation of and effectiveness of any plan implemented;

m. Appoint a special master or independent monitor to oversee and monitor Defendants' implementation of the requirements of the Court's Order;

n. Award Plaintiffs, pursuant to 29 U.S.C. §794(b), 42 U.S.C. §12205, 42 U.S.C. § 1415(i)(B) and 42 U.S.C. § 1988 the costs of this suit and reasonable attorneys' fees and litigation expenses;

o. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and until there is a reasonable assurance that Defendants will continue to comply in the future; and

p. Award Plaintiffs such other and further relief as the Court
deems just and proper.

Dated: December 14, 2004
New York, New York

Respectfully Submitted,

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