UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH BOE; LUIS DOE, a minor, by his mother, ROSA DOE; BETTY MOE, a minor, by her mother, LAURA MOE; SAM NOE, a minor, by his father, VINCENT NOE; ANN POE, a minor, by her mother, ANN POE, on behalf of themselves and all other persons similarly situated, Plaintiffs, -against- BOARD OF EDUCATION OF THE CITY OF NEW YORK; JOSEPH G. BARKAN, individually and as President of the New York City Board of Education; JAMES R. REGAN, MIGUEL O. MARTINEZ, AMELIA ASHE, ROBERT J. CHRISTEN, IRENE IMPELLIZZERI, MARJORIE LEWIS, individually and as members of the New York City Board of Education, FRANK MACCHIAROLA, individually and as Chancellor of the New York City Public Schools; NATHAN QUINONES, individually and as Executive Director of the Division of High Schools; PHILLIP GROISSER, CHARLES SCHONHAUT, LOUISE LATTY, AARON MALOFF, JAMES BOFFMAN individually and as superintendents of the New York City high schools; FRANK VIVONA, MARTIN FALKOFF, GERALD BEIRNE, individually and as hearing officers of the Division of High Schools Defendants	Civil Index No. CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief and damages. Plaintiffs seek to enjoin and to declare unconstitutional, certain New York City Board of Education policies and practices, and to challenge

§3214 3. of the New York State Education Law on its face and as interpreted by the New York City Board of Education. The statute provides for the suspension of high school students without a prior due process hearing in situations which do not constitute a clear and present danger. The statute further provides that a hearing must be held by the fifth school day after the suspension but does not specify any time limit on the suspension pending the decision of the superintendent. The policies and practices of the New York City Board of Education also include the suspension of high school students by the superintendents for periods in excess of five school days without providing the pupil and the person in parental relation thereto with the opportunity for a due process hearing. Further, plaintiffs seek a judgment declaring that certain practices and policies of the defendants, when providing a hearing, violate the Fourteenth Amendment to the United States Constitution, as well as state law and City Board of Education regulations. Plaintiffs seek a preliminary injunction ordering the defendants to (1) provide a due process hearing prior to suspension when the alleged conduct does not present a clear and present danger; (2) provide a due process hearing before the sixth school day following the suspension in all other situations, or (3) reinstate the pupil to the same school or, at the option of the pupil, to another equivalent full-time educational program where the hearing is not provided by the fifth school day following the suspension and even when a hearing is timely held, reinstate the student to the same school or, at the student's option, to an equivalent full-time instructional program, on the sixth school day following the suspension, pending the decision of the superintendent.

2. This action is brought pursuant to 28 U.S.C. 1331, 1343, 2201, 42 U.S.C. 1983, and Rules 23, 54, 57, and 65 of the Federal Rules of Civil Procedure, to protect the rights of plaintiffs and plaintiffs' class under the Fourteenth Amendment to the United States Constitution and state laws and City Board of Education regulations.

3. Declaratory and injunctive relief are necessary and appropriate since plaintiff and plaintiffs' class will otherwise suffer irreparable injury for which there is no adequate remedy at law.

JURISDICTIONAL STATEMENT

4. Jurisdiction over this suit is conferred upon this court by 28 U.S.C. 1331(a), as a controversy arising under the Constitution and laws of the United States; and by 28 U.S.C. 1343(3) and 42 U.S.C. 1983, as an action to preserve the rights, privileges and immunities secured to the plaintiff by the Constitution and laws of the United States from deprivation by defendants acting under color of state law, statute, ordinance, regulation, custom, or usage and the amount in controversy exceeds $10,000.

CLASS ACTION ALLEGATIONS

5. Plaintiffs bring this action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

6. The class is composed of all high school students of the New York City school system who have been, are presently, or will be suspended from High School by the superintendents (1) without being give a prior due process hearing when the alleged student behavior did not constitute a

clear and present danger; or (2) without being given a due process hearing before the sixth school day following the suspension; or (3) without being readmitted to school or, at the option of the pupil, to another full-time equivalent program, by the sixth school day following the suspension pending the hearing; or (4) were given a hearing that did not comport with the mandates of the United States Constitution, state law, or City Board of Education regulations; or (5) were excluded from school subsequent to the hearing but before the decision of the superintendent.

7. This class action is properly brought pursuant to Rule 23 because (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class, namely whether the defendant's suspension policies and procedures violate the Fourteenth Amendment to the United States Constitution and state laws and City Board of Education regulations; (c) plaintiffs' claims are typical of the class; (d) plaintiffs' attorneys have legal resources and experience adequate to protect the interests of the class; (e) in suspending high school students, prior to the due process hearing when the conduct does not constitute a clear and present danger; in all other situations, by not providing high school students suspended by the superintendent with a fair hearing before the sixth school day following the suspension; in not reinstating all pupils suspended by the superintendent to the same school or, at the option of the pupil, to another full-time equivalent program by the sixth school day following the suspension pending the hearing; in providing hearings which violate the Fourteenth Amendment to the United States Constitution, and state law and City Board of Education regulations; and in excluding

students from school subsequent to the hearing but prior to the superintendent's decision, the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; (f) the prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which might establish incompatible standards of conduct for the defendants in this action, and would create a risk of adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of other members who were not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

NAMED PLAINTIFFS

8. JOSEPH BOE is a nineteen-year-old student at Wingate High School who resides with his parents in Brooklyn, New York.

9. On May 6, 1980, Joseph Boe was informed by a Dean at his school that he was suspended by Superintendent PHILLIP GROISSER because of a single incident which had occurred on May 2, 1980.

10. On or about May 9, 1980, Joseph Boe received a letter from Phillip Groisser which contained a list of the charges against him and scheduled a hearing for May 27, 1980, fifteen school days after his suspension. Joseph Boe denies the allegations in the letter of suspension.

11. The letter of suspension did not state that Joseph had the right t a hearing within five school days or to be reinstated to school pending a hearing.

12. On May 14, Cathy Hollenberg, an attorney at Advocates for Children of New York, Inc., spoke to Martin Falkoff of the High School Hearing Office and requested that Joseph be reinstated to school pending the hearing date.

13. Later that day, Mr. Falkoff informed Ms. Hollenberg that the request for reinstatement had been denied but that Joseph would be transferred to Jefferson High School pending the hearing.

14. Joseph is a graduating senior and the involuntary transfer and exclusion from instruction have jeopardized his ability to complete his classwork and graduate with his class this June.

15. The exclusion and involuntary transfer have made Joseph Boe pessimistic about his ability to complete high school and secure the basic benefits and entitlements which he could expect as a result.

16. The allegations of misbehavior without access to an expeditious due process hearing have damaged Joseph Boe's reputation and good name and could seriously impugn his standing with his teachers and fellow students.

17. As a result of defendants' actions, Joseph Boe's rights under the Fourteenth Amendment to the United States Constitution, State law and City Board of Education regulations have been violated.

18. For the foregoing reasons, Joseph Boe prays for $20,000 in damages of the defendants.

19. Plaintiff LUIS DOE is a seventeen-year-old student at Aviation High School. He resides in Bronx, New York with his natural parents.

20. On April 29, 1980 Luis Doe was suspended by defendent AARON MALOFF.

21. On or about April 30, 1980 ROSA DOE received a letter from Aaron Maloff which contained a list of the charges and set down the hearing for May 16, 1980, thirteen school days after the suspension. Luis denies the charges.

22. The letter of suspension did not state that Luis had the right to a hearing within five days or to be reinstated pending a hearing.

23. On May 5, 1980 Diana Cruz from Advocates for Children of New York, Inc. called defendant MARTIN FALKOFF of the High School Hearing Office and requested that Luis be transferred to a neighborhood school in lieu of the suspension.

24. Later that day, Mr. Falkoff informed Ms. Cruz that the superintendent had denied the request for a non-punitive transfer.

25. On May 6, 1980, Ms. Cruz again called Mr. Falkoff and requested that Luis be reinstated to school pending the hearing date.

26. Later that day, Mr. Falkoff informed Ms. Cruz that a transfer to Bryant High School in Queens had been approved pending the hearing and decision of the superintendent.

27. Since Luis lives in the Bronx and only attends Aviation High School because it is a specialized vocational program, his parents rejectd the placement.

28. On May 7, 1980, Ms. Cruz informed Mr. Falkoff that the Bryant High School placement was inappropriate and requested that Luis be reinstated at Aviation High School or, if such reinstatement was denied to a high school near his home in the Bronx.

29. On May 8, 1980, Mr. Falkoff informed Ms. Cruz that Luis would

be transferred to Morris High School in the Bronx pending the hearing.

30. As a result of defendants' actions, Luis Doe's rights under the United States Constitution, state law, and New York City Board of Education regulations have been seriously violated.

31. Luis has missed eight days of instruction and has been transferred against his wishes to another high school that does not have an equivalent program. It appears unlikely that he will be able to complete his classes for the current academic year even if it is determined that the suspension was totally groundless.

32. The lengthy exclusion and involuntary transfer has made Luis Doe pessimistic about completing high school and securing the basic benefits and entitlements that he could expect as a result.

33. The allegations of misbehavior without access an expeditious due process hearing have damaged Luis Doe's good name and reputation and could seriously impugn his standing with fellow students and teachers.

34. As a result, Luis Doe prays for $20,000 in damages of defendants.

35 Plaintiff BETTY MOE is a fourteen-year-old high school student. She resides in Brooklyn, New York with her natural parents.

36. On March 18, 1980, Betty Moe was suspended by defendant PHILIP GROISSER. Her mother received a notice of the suspension and a list of the alleged reasons therefore on or about March 22, 1980. Betty Moe denies the allegations as set forth in the suspension letter.

37. Philip Griosser did not schedule a hearing to consider the allegations of misbehavior until April 15, or about 13 school days after the date of suspension.

38. Betty Moe and her mother, who is an immigrant from the Panama Republic, attended the hearing on April 15, 1980. Neither Betty Moe nor her mother understood the nature, gravity or consequences of the hearing and therefore requested an adjournment in order to seek legal assistance.

39. Betty Moe and her mother retained counsel on April 17, 1980. On that same day, counsel requested the earliest hearing date possible but could not obtain a hearing until May 5, 1980, some 26 school days after the original suspension and 12 school days after the counsel's request.

40. Later that next week, Mrs. Moe informed counsel that she received written notification that the hearing was scheduled for May 2, not May 5. Counsel made arrangements to appear on May 2.

41. Although the Moes requested home study materials so that Betty would not fall too far behind in her academic work, the school only provided the same on one occasion.

42 Through counsel, Betty Moe, asked to be transferred to one of three high schools pending the hearing. Such request was denied.

43. Betty Moe was transferred to a different high school on or about April 24, 1980 pending a hearing on the allegations of misbehavior.

44 On May 1st, Mr. Frank Vivona of the High School Hearing Office left a message to parent's counsel that a mistake had been made, and the hearing was actually scheduled for May 5, not May 2.

45. Due to previous commitments counsel to the Moe's could not make the hearing. He called the high school hearing office and asked for the next available date which was May 21, 1980, or about forty school days

after the date of the original suspension, and thirteen school days after the request.

46. The lengthy exclusion and involuntary transfer has made Betty Moe pessimistic about completing high school and securing the basic benefits and entitlements that she could expect as a result.

47. The allegations of misbehavior without access to an expeditious due process hearing have damaged Betty Moe's good name and reputation and could seriously impugn her standing with teachers and fellow students.

48. As a result of defendant's actions, both Betty Moe and her mother have experienced severe emotional distress.

49. As a result, Betty Moe prays for $20,000 in damages of the defendants.

50. Plaintiff SAM NOE is a seventeen-year-old student who resides with his father, VINCENT NOE in Queens, New York.

51. On January 18, 1980 Sam Noe was suspended by defendant AARON MALOFF, Superintendent of Queens High Schools. A letter containing the charges and date for a suspension hearing was sent.

52. Sam Noe denies the allegations contained in the letter of suspension.

53. A hearing concerning the charges was not scheduled until January 31, 1980, ten school days after the date of suspension.

54. The letter of suspension did not inform Sam or his parents that he had the right to a hearing within five days or reinstatement to his school.

55. On January 31, 1980, a hearing concerning the charges of suspense

was held before Martin A. Falkoff at the High School Hearing Office.

56. The only witness to the incident testified at the hearing that Sam was innocent of the charges, that he had been assaulted and had acted purely in self-defense.

57. On February 5, 1980 the hearing officer issued a decision which ignored the testimony of the only witness, found Sam Noe guilty of the charges and transferred him to Jamaica Evening Auxiliary Services, a non-diploma granting, part-time instructional program.

58. The letter of finding upholding Sam's suspension contains the approval of Aaron Maloff followed by the notation "MF."

59. Upon information and belief, the hearing officer Martin Falkoff supplied the signature of Aaron Maloff on the suspension letter and failed to obtain actual approval for the suspension from Aaron Maloff.

60. Sam Noe never attended the Jamaica Evening Auxiliary Services Program because he knew he could not obtain a high school diploma from that program.

61. On February 7, 1980 Sam Noe's counsel filed an application for emergency relief with Chancellor Frank J. Macchiarola.

62. On February 29, 1980, no response to the emergency relief request having been received, Sam Noe's counsel filed a final appeal to the Chancellor. To date no decision has been received on the appeal.

63. On March 5, 1980, the Chancellor's decision granting the request for emergency relief was received and Sam was permitted to transfer to John Bowne High School.

64. As a result of defendant's actions Sam Noe was excluded from instruction for nearly two months.

65. The exclusion from education caused Sam Noe to fall behind in his schooling and has jeopardized his ability to maintain passing grades in his studies and to graduate with his class.

66. The transfer to another high school program without access to a proper due process hearing has injured Sam Noe's good name and reputation among his fellow students and his teachers.

67. The exclusion and transfer has made Sam Noe pessimistic about the fairness and utility of the public educational system and has discouraged him in his attempts to complete his education.

68. As a result of defendant's actions, Sam Noe's rights under the Fourteenth Amendment to the United States Constitution and New York State law and New York City Board of Education regulations have been violated.

69. For the foregoing reasons, Sam Noe prays for $20,000 in damages.

70. Plaintiff ANN POE is a sixteen-year-old high school student who resides with her mother, ANN POE, in Queens, New York.

71. On November 13, 1979 Ann Poe was suspended from Far Rockaway High School by Aaron Maloff, Supervising Superintendent of Queens High Schools at the request of Carl Berlin, Principal of that school, on the basis of a single incident which occurred on November 8, 1979.

72. Mrs. Poe received a letter of suspension and a list of the allegations therefore. On November 13, 1979 a hearing was held with Martin A. Falkoff presiding as hearing officer.

73. The letter of suspension was signed Aaron Maloff followed by

the notation (MF). Upon information and belief, Martin Falkoff, the hearing officer in this case prepared the statement of charges against Ann Poe.

74. Mrs. Poe and Ann attended the November 19 hearing without counsel. Mrs. Poe could not afford an attorney nor was she aware of where she could obtain free legal assistance. Neither the letter of suspension nor the hearing officer advised her of the need for counsel or where she might obtain legal aid.

75. By letter dated December 3, 1979, Mrs. Poe was informed that the suspension had been upheld based on a finding that Ann had cut classes, loitered, was insubordinate and used bad language.

76. The Superintendent ordered that Ann be transferred to the Jamaica Day Auxiliary Program, a non-diploma granting, part-time instructional program. Ann Poe never attended the Jamaica Day Auxiliary Program because she knew she could not obtain a high school diploma from that program.

77. The letter upholding the suspension was signed Aaron Maloff followed by the notation MF. Upon information and belief, MF is Martin Falkoff.

78. Upon information and belief, the hearing officer made a final determination upholding the suspension without receiving approval from the superintendent, as required by state law and New York City Board of Education regulations.

79. On January 8, 1980 Mrs. Poe, who still did not have an attorney, filed a letter appealing this matter to the Chancellor. She was then referred for the first time to Advocates for Children for legal assistance.

80. To date no decision had been rendered on the appeal.

81. On March 5, 1980, Mrs. Poes' counsel received a decision of the Chancellor which granted the request for emergency relief on the grounds that transfer to auxiliary services was not appropriate.

82. On May 8, 1980, more than two months after the formal appeal was filed, Chancellor FRANK J. MACCHIAROLA issued a final decision reiterating the inappropriateness of the transfer to auxiliary services and additionally finding that there was a possibility of bias in the hearing officer's disposition and ordering a de novo hearing. This decision was received by Mrs. Poes' counsel on May 13, 1980.

83. On March 7, 1980, Ann's request that she be reinstated to a regular academic high school program was granted and she was allowed to transfer to Beach Channel High School.

84. As a result of defendant's actions, Ann Poe was totally excluded from school for nearly two months. This exclusion has caused her to suffer academically and emotionally.

85. Further, the allegations of misbehavior without access to a proper process hearing have damaged Ann Poes' good name and reputation in her current educational placement and seriously impugn her standing with fellow students and teachers.

86. A new hearing on the charges of suspension will serve no useful purpose at this point since over six months have elapsed snce the incident in question and it is unlikely that evidence and testimony will be reliable after this lapse of time.

87. Requiring the Poes' to attend a new hearing on the charges will cause them additional emotional distress and aggravation.

88. As a result of defendant's actions Ann Poes' rights under the Fourteenth Amendment to the United States Constitution and New York State law and New York City Board of Education regulations have been violated.

89. For the foregoing reasons, Ann Poe prays for $20,000 in damages.

DEFENDANTS

90. Defendant BOARD OF EDUCATION OF THE CITY OF NEW YORK is the government agency charged under §2590 of the New York State Education Law with overall supervision of the New York City public schools including, but not limited to, the high schools and, as such, has power to formulate policies with regards to suspensions. Pursuant to the By-laws of the Board of Education, Article 7, Section 7.3, the defendant BOARD OF EDUCATION also has the power to hear appeals of any decision to suspend a student.

91. Defendant FRANK J. MACCHIAROLA is the Chancellor of the New York City public schools. Pursuant to §2590 of the New York State Education Law, he is charged with the overall administration of the public high schools in New York City and as such, has the power to formulate policies and procedure with regard to suspensions. Defendant MACCHIAROLA is also empowered by Section 7.3 of the By-laws of the New York City Board of Education to hear any appeals from a decision of a high school superintendent concerning suspensions.

92. Defendant JOSEPH G. BARKAN is President of the New York City Board of Education and, as such, is responsible for the provision of education to students in New York City, including high school students.

93. Defendants JAMES F. REGAN, MIGUEL O. MARTINEZ, IRENE IMPELLIZZERI, AMELIA ASHE, ROBERT J. CHRISTEN, and MARJORIE A. LEWIS are members of the Board of Education of the City of New York and, as such, are reponsible for the provision of education to students in New York City, including high school students.

94 Defendant NATHAN QUINONES is the Executive Director of the Board of Education's Division of High Schools and, as such, is responsible for the overall administration of the New York City High Schools and for the supervision of the High School Hearing Office.

95. Defendants PHILIP GROISSER, JAMES BOFFMAN, LOUISE LATTY, CHARLES SCHONHAUT, and AARON MALOFF are high school superintendents and as such are responsible for the overall administration of the high schools under their respective jurisdiction. Under Section 3214 of the New York State Education Law, they are empowered to suspend from instruction any pupil who is (1) insubordinate or disorderly, or whose conduct endangers the safety, health or welfare of others; (2) any pupil who is feebleminded to the extent that he cannot benefit from instruction; (3) any pupil whose physical or mental condition endangers the health, safety, or morals of himself or of other pupils and they are required to personally hear and determine the proceeding for each such student or, in their discretion, may designate a hearing officer to conduct the hearing and make advisory findings of fact and recommendations regarding the appropriate measure of discipline.

96. Defendant FRANK J. VIVONA is Chief Hearing Officer of the Division of High Schools of the New York City Board of Education. Defendants MARTIN FALKOFF and GERALD BEIRNE are Associate Hearing Officers of the Division of

High Schools of the New York City Board of Education. As such, they are responsible for conducting hearings for all high school students who have been suspended by the superintendent and for making advisory findings of fact and recommendation as to the appropriate measure of discipline to the appropriate high school superintendent.

CITY POLICIES AND PRACTICES

97. Pursuant to New York State Education Law §3214 3. suspended students may be excluded from school for an indeterminate period of time subsequent to the hearing but before the decision of the superintendent regarding the suspension.

98. Pursuant to New York State Education Law §3214 3. students may be suspended from school prior to a due process hearing even through the alleged conduct does not constitute a clear and present danger.

99. In New York City, high school students are regularly suspended by the superintendents for periods far in excess of five school days before they are given a due process hearing.

100. Such students are not notified in the suspension letter that they have the right to reinstatement in the event they are not provided with a fair hearing in a timely manner.

101. The notice provided to suspended pupils and the person in parental relation thereto does not contain a listing of where free or low cost legal services may be obtained.

102. The suspended students and persons in parental relation are not informed that, when a student has been suspended as insubordinate or dis-

orderly, and the student is of compulsory attendance age, that immediate steps should be taken for his attendance upon instruction elsewhere.

103. The defendants do not, when a student of compulsory school age is suspended as insubordinate or disorderly, take immediate steps for the student's attendance upon instruction elsewhere.

104. The notice of allegations of misbehavior contain conclusory legal terms that are vague and have the effect of denying the pupil and person in parental relation reasonable notice.

105 The notice of allegations of misbehavior for anectotal record suspensions do not give the parent and person in parental relation thereto reasonable notice of the charges to be proved at the hearing.

106. The notice of allegations of misbehavior contain conclusory legal terms that have the effect of unduly prejudicing the hearing officer conducting the hearing.

107. Even when the hearings are conducted, the hearing officers do not make meaningful findings of fact.

108. Even when the hearings are conducted, the defendant superintendents do not make their decisions based on substantial evidence.

109. Even when the hearings are conducted, the hearing officers are not impartial and are biased in favor of witnesses appearing on behalf of the school.

110. Even when the hearing is conducted, there is a delay between the hearing and the superintendent's final decision during which the suspended pupil is not allowed to return to school.

111. New York State Education Law §3214 3. violates the due process clause of the Fourteenth Amendment to the United States Constitution by providing for the suspension of high school students without a prior due process hearing in situtations where the student's alleged conduct does not constitute a clear and present danger.

112. New York State Education Law which allows high school students to be excluded from school for an indeterminate period of time subsequent to the hearing but before the decision of the superintendent violates the Fourteenth Amendment to the United States Constitution.

113. New York City policies and practices of suspending high school students without providing them with an expeditious due process hearing violates the Fourteenth Amendment to the United States Constitution.

114. New York City policies and practices of suspending high school students for a period in excess of five school days without providing them with a due process hearing constitutes a knowing and wilful violation of state law as against plaintiffs and plaintiffs' class in violation of the Fourteenth Amendment to the United States Constitution.

115. New York City policies and practices of not providing the suspended pupil and person in parental relation thereto with a list of agencies that provide free or low cost legal assistance violates the Fourteenth Amendment to the United States Constitution.

116. New York City policies and practices of framing the allegations of misbehavior in vague and legally conclusory terms violates the Fourteenth Amendment to the United States Constitution.

117 New York City policies and practices of not providing reasonable notice of the allegations of misbehavior when a high school student is suspended by the superintendent based upon the student's anecdotal record violates the Fourteenth Amendment to the United States Constitution.

118. New York City policies and practices of not making meaningful findings of fact after the hearing has been conducted violates the Fourteenth Amendment of the United States Constitution.

119. New York City policies and practices of not making decisions based on sustantial evidence violates the Fourteenth Amendment to the United States Constitution.

120. New York City policies and practices of being biased in favor of witnesses that appear on behalf of the school violates the Fourteenth Amendment to the United States Constitution.

121. New York City policies and practices of excluding the student from school after the hearing in excess of five school days while the superintendent makes a decision with regards to findings of facts and appropriate dispositions violates the Fourteenth Amendment to the United States Constitution.

122. New York City policies and practices of suspending high school students for a period in excess of five school days without providing a due process hearing, of not taking immediate steps for instruction elsewhere where a student has been suspended as insubordinate or disorderly, of not notifying students suspended by the superintendents and the persons in parental relation thereto of where free or low cost legal assistance can be obtained, and of not providing hearings that comport with due process violates state law and City Board of Education regulations.

RELIEF REQUESTED

123. WHEREFORE plaintiffs respectfully pray that the Court:

1. Assume jurisdiction over this action pursuant to 28 U.S.C. 1331(a), 28 U.S.C. 1343(3) and 42 U.S.C. 1983.

2. Enter a temporary restraining order enjoining the defendants' to provide a hearing by the fifth day following the suspension, or, in the alternative, to reinstate the student in the same school or, at the option of the student, to another equivalent full-time program.

3. Enter a preliminary injunction enjoining the defendants to a) provide students with due process hearings prior to the suspension unless the alleged behavior constitutes a clear and present danger; b) provide a due process hearing before the sixth school day in all other situations or reinstate the pupil in the same school or, at the option of the pupil, to another equivalent full-time program where the hearing is not provided by the sixth school day; c) even where a hearing is timely held, reinstate the student to the same school or, at the student's option, to an equivalent full-time instructional program, on the sixth school day after the suspension, pending the decision of the superintendent.

4. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action may be maintained as a class action.

5. Pursuant to 28 U.S.C. 2201 and Rules 57 and 74 of the Federal Rules of Civil Procedure, enter a judgment declaring that the defendants' policies and practices of suspending high school students without a prior due process hearing when the allegations of misbehavior do not constitute a

clear and present danger; of failing to provide high school students suspended by the superintendent with a due process hearing before the sixth school day; of failing to reinstate the pupil to the same school equivalent program when the hearing has not been conducted by the fifth school day following the suspension; of failing to provide pupils suspended by the high school superintendent and persons in parental relation thereto with a list of where free and low-cost legal assistance may be obtained; of failing to provide reasonable notice to the high school student and person in parental relation thereto when the suspension is based on the anecdotal record; of failing to provide a hearing that comports with the United States Constitution and state law and city Board of Education regulations, of failing to take immediate steps for the high school student's attendance elsewhere where the student is suspended by the superintendent for insubordinate or disorderly behavior, of excluding suspended students for an indeterminate period of time subsequent to the hearing but before the decision of the superintendent violates the United States Constitution and state law and city Board of Education regulations.

6. Pursuant to 28 U.S.C. 2202 and Rule 63 of the Federal Rules of Civil Procedure enter a permanent injunction enjoining the New York City defendants and their officers, agents, servants, employee and successors in office to:

(a) provide students with a prior due process hearing when the alleged student conduct upon which the suspension is based, does not constitute a clear and present danger;

(b) provide students suspended by the high school superintendents and the person in parental relation thereto with a due process

hearing by the sixth day following the suspension;

(c) reinstate the pupil to the same school or, at the option of the pupil, to another full-time equivalent program when the hearing has not been conducted by the fifth school day following the suspension;

(e) provide pupils suspended by the high school superintendent and the persons in parental relation thereto with a list of where free and low cost legal assistance may be obtained;

(f) provide reasonable notice to the high school pupil and person in parental relation thereto when the suspension is based on the anecdotal record;

(g) provide students suspended by the superintendent and the person in parental relation thereto with a hearing that comports with United States Constitutional and state statutory and City Board of Education mandates;

(h) take immediate steps for the student's attendance upon instruction elsewhere where the student is suspended by the superintendent for insubordinate or disorderly behavior;

(i) issue decisions in an expeditious manner after the suspension hearing has been held;

(j) identify and locate in the educational records of each class member, any and all references to the superintendent's suspension, and remove and expunge such reference.

7. Pursuant to 28 U.S.C. 1331, 28 U.S.C. 2201 and Rules 57 and 74 of the Federal Rules of Civil Procedure, enter a judgment granting named plaintiffs damages prayed for as a result of the city's failure to observe

Constitutional, state statutory and City Board of Education regulatory mandates.

8. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiffs reasonable attorney's fees, costs, and disbursements and grant plaintiff and the members of the class such additional and alternative relief as may seem just and proper and equitable to this court.

Dated: New York, New York

_____, 1980

Yours, etc.

JAMES M. MORRISSEY, ESQ.
The Door - A Center of Alternatives
618 Avenue of the Americas
New York, New York 10011
(212) 691-6161

FRANCES M. PANTALEO, ESQ.
Advocates for Children of New York, Inc.
29-28 41st Avenue
Long Island City, New York 11101
(212) 729-8866

JANET M. CALVO, ESQ.
Washington Square Legal Services, Inc.
80 Fifth Avenue, Suite 1502
New York, New York 10011
(212) 924-3200