School Push-Outs: An Urban Case Study

> Exposed in these three cases is a lesion—the alleged "pushing out" of difficult-to-educate students—that has been festering for many years. Like generations of students before them, plaintiffs in these cases believe that they were illegally discharged from a New York City public school.[1]

During the 2001–2002 school year, Advocates for Children of New York began to hear from students, parents, schools, and youth service providers that high school students were being forced to leave school or transferred into General Educational Development (GED) programs.[2] Local media outlets and policy organizations also started reporting that younger students and those with disabilities were being transferred in unusually greater numbers to GED programs traditionally used by adults. Those programs were unprepared to address the students' more intensive needs.[3]They all told the same story. Students as young as 15 and as old as 20, having a range of academic achievements, were being told that they were no longer allowed to stay in high school because they were too old, did not have enough credits, or were not on track to earn a diploma in four years. In some cases students were discharged outright; in others, students were told that their only option was to transfer to a GED program. Some of the students were close to graduation and were missing only one or two classes. Others were on track to graduate in more than four years, while some were behind. Many were considered to be overaged and undercredited by their high schools and had difficulty maintaining regular attendance.

These practices—later deemed "push-outs"—were illegal expulsions which violated students' rights under the due process clause of the Fourteenth Amendment to the U.S. Constitution, New York state law and, in some cases, federal disability statutes.[4] The law in New York is clear: students are required to stay in school until the year they turn 17 and have a right to stay in school until the end of the year in which they turn 21 or earn a regular diploma.[5]

Here I describe the efforts undertaken by Advocates for Children to address the push-out problem in New York City. Advocates for Children combined direct service, public education, community outreach, public policy, media campaigns, and impact litigation, the last focusing on four class action cases filed on behalf of youth who claimed that they were illegally excluded from school. Three of those cases were consolidated into *R.V. v. New York City Department of Education* and settled in the summer of 2004. In the fourth case, *E.B. v. New York City Board of Education*, filed by students with disabilities, the court granted class certification in July 2004, one month after the consolidated cases were resolved.[6]

These efforts and actions of government stakeholders gained media attention on a local and national level and triggered awareness that the school push-out problem is not confined to New York City. It has been brewing in many cities and rural areas and has been fueled by the No Child Left Behind Act of 2001, which holds schools accountable for students' outcomes by focusing on high-stakes testing and four-year gradua-

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[1] *R.V. v. New York City Department of Education*, 321 F. Supp. 2d 538 (E.D.N.Y. 2004) (citation omitted).

[2] For more than thirty-two years, Advocates for Children has combined community-based services with systemic reform. The organization's mission is to ensure a quality and appropriate education for poor, minority, and disabled students in New York City. In furtherance of that mission, Advocates for Children mixes strategies including direct services, litigation, policy analysis, community outreach, public education, collaboration, and media campaigns.

[3] See, e.g., Mark Greer, *Learning Disabled*, CITY LIMITS (Feb. 2002) (reporting that large numbers of youth, many of whom had learning disabilities, were being discharged to General Educational Development (GED) programs), www.citylimits.org/content/articles/articleView.cfm?articlenumber=61; E.J. Beckwith, What's Up with the Rapid Increase of Young People in GED and Adult Education Programs? School to Work Programs and Issues, No. 1, at 3–15 (2002) (reporting that between 2000 and 2002, adult literacy programs in New York City reported "a significant increase in the number of younger adults, 16–18 years of age" applying for GEDs); New York State Education Department, New York State Alternative Education: State of the Practice 2003 www.emsc.nysed.gov/workforce/alted/alternativeEd/docs/alternativeeducationstateofpractice2003.pdf. (reporting that number of children in New York City attending alternative programs leading to the GED increased from 18,000 in 1996 to 28,000 in 2002); Davis H. Monk et al., Adoption and Adaptation: New York State School Districts' Response to State[-]Imposed High School Graduation Requirements: An Eight-Year Retrospective (2001), www.ecs.org/html/Document.asp?chouseid=3556 (a study prepared for the New York State Educational Finance Research Consortium).

[4] See Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1487; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Americans with Disabilities Act of 1990, 42 U.S.C. § 12111 (2004).

[5] N.Y. EDUC. LAW § 3202 (McKinney 2003).

[6] *R.V.*, 321 F. Supp. 2d at 538; *E.B. v. New York City Board of Education*, No. 1:02 Civ. 05118, 25 NEW YORK LAW JOURNAL 23 (E.D.N.Y. Aug. 5, 2004)

tion rates.[7] In New York the problem started earlier than the Act; in 1996 the New York State Board of Regents revised the state's graduation requirements, phasing in the required passing of five different regents examinations to obtain a diploma.

Exclusionary practices have also flourished in many areas due to faulty and nonuniform pupil-accounting measures and a lack of standards of accountability for most alternative school programs. In New York City, for example, student-outcome accounting is not transparent, and students who leave school without a diploma are not necessarily counted as dropouts. Moreover, while regular schools are required to publish report cards, most alternative programs and GED preparation centers are not required to do so, leading to a lack of accountability in these programs.

There can be no doubt about what the impact of these exclusionary practices and policies will be on minority youth who are already graduating at rates that are far lower than their white counterparts.

In an increasingly competitive global economy, the consequences of dropping out of high school are devastating to individuals, communities, and our national economy. At an absolute minimum, adults need a high school diploma if they are to have any reasonable opportunities to earn a living wage. A community where many parents are dropouts is unlikely to have stable families or social structures. Most businesses need workers with technical skills that require at least a high school diploma. Yet, with little notice, the United States is allowing a dangerously high percentage of students to disappear from the educational pipeline before graduating from high school.[8]

Students who do not graduate with high school diplomas are more likely to be involved in the criminal justice system, find themselves dependent on public assistance, or become homeless.[9]

History of the School Push-Out Litigation

In an attempt to respond to a growing number of complaints received by Advocates for Children, in November 2002, in partnership with the Office of the Public Advocate for the City of New York, Advocates for Children issued a report, "Pushing Out At-Risk Students: An Analysis of High School Discharge Figures." This report documented that more than 50,000 high school students had been "discharged" from the New York City school system each year without receiving diplomas. At the time the term "discharged" represented a summary of both students who left the school system for a variety of reasons as well as those who transferred to GED programs in the New York City system.[10]

A significant percentage of the discharged students were not being counted as dropouts, even if they were moving to programs that could not grant a regular high school diploma or if they were leaving school completely. The legal reasons for discharge (moving to another school district or getting a job) could not account for this massive number of discharges, which were higher than the graduation and dropout numbers combined. This report received some media attention, but the New York City Department of Education did not react to the report other than to say that the information was not accurate.[11] The report was distributed to policymakers and youth service providers across the city, and, as a result, greater numbers of pushed-out students and youth service providers began calling Advocates for Children for assistance.

Working with eight community-based organizations and the New York Immigration Coalition through the Empire (Equity Monitoring Project for Immigrant and Refugee Education) collaborative, Advocates for Children developed a survey for the community-based organizations to screen discharged students in their communities and set up a hotline and automatic referral mechanism from partners and other community-

[7]See Gary Orfield et al., Civil Rights Project at Harvard University, Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis (2004), www.urban.org/url.cfm?ID=410936 (documenting a significant disparity in graduate rates between white and minority students) (both Advocates for Children and the Civil Society Institute were contributors to this report. Advocates for Children collected stories of school push-outs and other exclusionary practices from advocacy groups and lawyers across the country); No Child Left Behind Act of 2001, 20 U.S.C. § 6301.

[8]Orfield, *supra* note 7, at 1.

[9]*See, e.g.,* American Psychological Association Commission on Youth Violence, Violence and Youth (1993) (82 percent of all crimes are committed by people who drop out of school); Caroline W. Harlow, U.S. Department of Justice, Education and Correctional Populations (2003), www.ojp.usdoj.gov/bjs/pub/pdf/ecp.pdf (41 percent of state and federal prison inmates do not have a high school diploma or equivalency certificate—more than twice the percentage of persons not completing high school in the general population).

[10]Office of the Public Advocate for the City of New York & Advocates for Children, Pushing Out At-Risk Students: An Analysis of High School Discharge Figures (2002), www.advocatesforchildren.org/pubs/list.php3.

[11]See Carl Campanile, *Shocker of Booted Students*, New York Post, Nov. 8, 2002, at 9.

based organizations. Advocates for Children also conducted a number of workshops specifically targeted to reach discharged students and represented them in efforts to reenroll in school. One client referred by a community-based organization was G. Ruiz, a 17-year-old student who was classified as an "English language learner" and claimed to have been illegally discharged from Franklin K. Lane High School.

Lane had one of the highest rates of discharge in the city and a student body composed of more than 50 percent Latino students. Information received later revealed that the high school discharged approximately 30 percent of all students on its register each year or more than 1,100 out of approximately 3,500 students on the school register. The high school also had a troubled past, having been sued in 1969 by 600 students who claimed that they had been illegally subject to a mass expulsion.[12]

Ruiz v. Pedota

In January 2003 G. Ruiz, by his mother, filed a class action complaint against the New York City Department of Education, Schools Chancellor Joel I. Klein, and the principal of Franklin K. Lane High School.

Ruiz claimed that when he returned to Lane in September 2002, he was told that he did not have enough credits to remain in school and was given a choice to leave school or enroll in a GED program. At the time of the suit, Ruiz had half of the number of high school credits he needed to graduate, although he was not on track to graduate in four years.[13] Ruiz alleged violations of the due process clause of the Fourteenth Amendment of the U.S. Constitution based on deprivation of the right to an education guaranteed to students under New York law, as well as pendent claims based in part on state laws affording both the right to stay in school until the age of 21 and protection provisions against exclusions and transfers.[14] Judge Jack B. Weinstein, a renowned trial judge, was the presiding judge in *Ruiz*.[15] Early on in the *Ruiz* action, Judge Weinstein indicated an understanding of the devastating consequences that could occur when children are not in school and the extent to which delay reduces the chances that a young person will return to school.[16]

The Department of Education immediately allowed Ruiz to reenroll in school. Without admitting liability, within a few weeks of the case being filed, the department voluntarily sent notices and surveys to more than 5,000 students who had been discharged and transferred in the two and one-half years before the case was filed; the department informed them of their right to return to school until the age of 21.[17] After surveys that went out with the initial notices were returned, the complaint was amended to add twenty-four plaintiffs who claimed that they were improperly excluded from Lane.[18] After the case was filed, the law firm of Morrison & Foerster generously agreed to cocounsel the case on a pro bono basis. The plaintiffs then filed a motion for class certification and preliminary injunction.

A Citywide Problem

In July and August 2003 the *New York Times* ran a two-part investigative series on the problem of school push-outs; the series appeared on the front page on two consecutive days.[19] Advocates for Children had supplied the *Times* with data, background information, and access to students who had contacted Advocates for

[12] See *Knight v. Board of Education*, 48 F.R.D. 115 (E.D.N.Y. 1969).Franklin K. Lane High School's problems continued after the suit was filed, when New York State Education Department placed it on a list of schools not making progress and then was identified as one of New York City's most dangerous schools. See, e.g., Dina Temple-Raston, *Mayor's Moves Have Big Impact on 16 Impact Schools*, New York Sun, June 30, 2004, at 4, *Editorial: Mike Mops Up the Dirty Dozen*, Daily News, Jan. 6, 2004; Carl Campanile, *Schools of Shame—City's Sorry Six Go from Bad to Worse,* New York Post, Aug. 11, 2003, at 4.

[13] *R.V.*, 321 F. Supp.2d at 538.

[14] *Id.*

[15] Judge Jack B. Weinstein had issued a preliminary injunction in a similar, if not identical, case against Lane High School in 1969. See *Knight*, 48 F.R.D. at 115 (600 Lane students claimed that they were subject to a mass expulsion without due process).

[16] *Ruiz v. Pedota*, No. 03-CV-0502 (JBW), 2004 U.S. Dist. LEXIS 50 (E.D.N.Y. Feb. 3, 2003) (order approving confidentiality arrangement) (as the parties know, once a student is separated from regular classes, reacquiring the personal discipline necessary for continued regular attendance becomes increasingly difficult for the student).

[17] While some of the discharges and transfers were for legitimate reasons (e.g., students were discharged because they moved out of the city, voluntarily dropped out, or transferred to other regular high schools), hundreds, if not thousands, of students might have been discharged or transferred out of the school without any notice that they had the right to remain or assessing whether those students could benefit from a GED program. In fact, Lane High School's on-site GED program that housed more than 100 students each year was producing only one GED diploma each year. Judge Weinstein had ordered a similar notice to be sent to the Lane students who claimed to be illegally excluded in 1969 in the *Knight* case. See *Knight*, 48 F.R.D. at 108.

[18] *Ruiz v. Pedota*, No. 03 CV 0502 (E.D.N.Y. March 28, 2003).

[19] See Tamar Lewin, *To Cut Failure, Schools Shed Students,* New York Times, July 31, 2003, at A1; *id.*, *High School Under Scrutiny for Giving up on Its Students*, New York Times, Aug. 1, 2003, at A1. See also *Suit Charges Hundreds Were Pushed out of High School*, Associated Press, Aug. 1, 2003; Nat Henthoff, *Testing to Create Dropouts*, Village Voice, Sept. 23, 2003, at 4.

Children for assistance. Until the *Times* articles were published, the New York City Department of Education had not publicly conceded that a citywide push-out problem existed. However, in the first *Times* article, describing the push-outs as a citywide concern, the New York City schools chancellor and the mayor's office admitted that schools across New York City were pushing out struggling students—a problem that they said they inherited from the previous administration.[20] Chancellor Klein called the problem a "tragedy" that was a "real issue" for the city.[21] The mayor's office stated that "we've got to stop giving the signal that we're giving up on students who don't [graduate in four years]" and that, "[f]rom the mayor's office on down, we have to make sure that everyone knows it's not acceptable to tell children to leave a school because they've fallen behind."[22] While the chancellor declined to comment on the Lane suit specifically, the *Times* reported that he sent a message to principals across the city that he wanted to make it "unequivocally clear" that he did not support the push-out practice and would be taking steps to end it.[23] The *Times* also reported the chancellor as saying, "It is a disservice to our students and ourselves ... to rely on shortcuts or play numbers games in order to make things look better than they really are.'"[24] These admissions by high-level city officials in combination with the public awareness generated by the *Times* articles and subsequent media coverage helped shape a resolution of the citywide issues. The coverage also brought the problem into the national spotlight.

Changes in Policies and More Lawsuits

In October 2003 the City hastily issued new citywide policies for discharging and transferring students to incorporate a predischarge conference and notice of rights to students.[25] However, Advocates for Children believed that the policies were not adequate to stop the long-standing practice at Lane High School or at the other schools from which students were continuing to be pushed out across the city. Advocates for Children continued to receive calls from students who were being discharged or transferred and GED providers who were receiving those students. Throughout the fall of 2003, the media continued to report charges from GED providers who were seeing discharged students, despite Department of Education claims that discharges were down from the previous year.[26]

Two additional class action suits were filed as related actions to *Ruiz*. In *S.G. v. Martin Luther King High School*, S.G., a 15-year-old student who was pregnant, alleged that she had been improperly transferred out of her school.[27] In *R.V. v. Bushwick High School*, R.V., an 18-year-old student with a disability, claimed that he had been forced to enroll in the GED program or leave school, notwithstanding that his school continued to allow him to participate in after-school activities.[28] In both *R.V.* and *S.G.*, without admitting liability, the Department of Education allowed both the students to return to school after the cases were filed.

Citywide Policy Changed

The spring and summer of 2004 saw the resolution of some of the outstanding issues and a resolution of the three lawsuits.

In January 2004 the Department of Education revised its citywide policy on transfers and discharges after incorporating some input from Advocates for Children. The new policy requires a planning interview to be conducted before the discharge or transfer of a student to a program that does not allow the student to earn regular high school credits and take examinations needed to obtain a regular diploma. The policy clarifies that students may not be discharged or transferred without their consent and without following the required state and local due process procedures. At the planning interview the parent and student are informed in writing about alternative programs and are notified about their rights, including the right to attend school full-time until the student earns a diploma or turns 21. Regional administrators are required to review and approve each discharge and transfer to non-diploma-granting programs. These

[20] See Lewin, *To Cut Failure*, *supra* note 19.

[21] *See id.*

[22] *Id.*

[23] See Lewin, *High School Under Scrutiny*, *supra* note 19.

[24] *Id.*

[25] See Tamar Lewin, *City to Track Why Students Leave School,* New York Times, Sept. 15, 2003, at 1 (Metro section).

[26] See Lewin, *To Cut Failure*, *supra* note 19.

[27] *R.V.,* 321 F. Supp. 2d at 538.

[28] *Id.* Data for Bushwick High School showed that the school excluded 30 percent of its students between 1998 and 2001.

changes are an improvement. However, what was not clear was whether they would go far enough to protect students' rights and be sufficiently monitored to ensure compliance with the policy. Advocates for Children believed that the policy failed to adopt specific procedures to protect the rights of students with disabilities or ensure that students were accurately informed about whether they would succeed in a GED program.[29]

In January 2004 the Department of Education mailed a notice to New York City public school students who were discharged or transferred between July 2, 2003, and January 21, 2004. The notice informed them of their right to attend high school until the end of the year in which they turn 21 and the right to refuse to be transferred to a part-time education program, such as a GED. The department also posted the notice on its website and, in twenty-seven English and foreign language newspapers, placed an advertisement encouraging students to return to school, informing them of their right to return to school until the age of 21, and setting up enrollment for February 2004.[30]

In February 2004 Judge Weinstein conditionally approved the settlement agreement in the *Ruiz* case.[31] The settlement afforded students who claimed that they were "separated" from Lane High School the right to reenroll in Lane or another school. Those students also received priority enrollment in night and summer school.[32] The Department of Education agreed not to discharge and transfer students due to a lack of credits, age, or school attendance and agreed to implement the new citywide policy for students being discharged and transferred for all future transfers and discharges from Lane High School. The department agreed to fund a community-based organization to provide support services such as counseling and tutoring for Lane students.[33] Individual students retained their right to bring individual damage actions in the future, and defendants did not admit liability. The agreement also called for reporting and monitoring of discharges and transfers by plaintiffs' counsel.[34]

Cases Resolved

On June 16, 2004, the Department of Education sent to plaintiffs' counsel a letter setting forth the steps that the department had taken to date to address citywide problems and agreeing to undertake voluntary information sharing with counsel (outside the scope of the three lawsuits) concerning discharges and transfers on a citywide basis during the 2004–2005 and 2005–2006 school years.[35] The department indicated that it invested $8 million to develop new programs for overaged and undercredited students. The department indicated that it was restructuring its alternative schools division to serve the needs of overaged and undercredited students better.[36]

On June 17, 2004, the *R.V.* settlement agreement was signed.[37] On the same day Judge Weinstein issued a memorandum, judgment, and order in connection with his approval of the *R.V.* settlement and final approval of the *Ruiz* settlement. Judge Weinstein called the trilogy of cases, which were litigated during the fiftieth anniversary of *Brown v. Board of Education*, a "fitting reminder that the American struggle for educational excellence for all—a *sine qua non* of equality of opportunity—goes on and with some success."[38] He noted that while the total impact of the individual suits was fairly small on the city's more than one million students, their "principles—acknowledged by the City—set a standard for the entire system."[39]

Judge Weinstein's opinion also stresses the importance of education and admonishes future judges to consider similar cases with care:

[29]Provisions of the policies that apply to children with disabilities are likely to be litigated in *E.B. v. New York City Board of Education*, No. 1:02 Civ. 05118, 25 NEW YORK LAW JOURNAL 23 (E.D.N.Y. Aug. 5, 2004).

[30]See Tamar Lewin, *Students Discharged Early Are Invited to Return by City*, NEW YORK TIMES, Jan. 30, 2004, at 7 (Metro section). The advertisement read, in part, as follows: "If you are under the age of 21 and do not have a high school diploma, you may have the right to be in school, even if you dropped out or feel you were urged to leave school …. If you would like help reconnecting with school, the N.Y.C. Department of Education invites you to take advantage of a program it is running at least through February 6, 2004." See also Celeste Katz, *Dropouts Offered a Second Chance,* NEW YORK DAILY NEWS, Jan. 30, 2004, at 3.

[31]*Ruiz v. Pedota*, No. 03-CV-0502 (JBW) 2004 U.S. Dist. LEXIS 50 (E.D.N.Y. Jan. 4, 2004). See also Tamar Lewin, *City Settles Suit and Will Take Back Students*, NEW YORK TIMES, Jan. 8, 2004, at B3.

[32]*R.V.*, 321 F. Supp. 2d at 538, app. B.

[33]*Id.*

[34]*Id.*

[35]Letter from Michael Best, Counsel to the Chancellor, to Jill Chaifetz, Executive Director, Advocates for Children (June 16, 2004) (on file with Elisa Hyman); see also Tamar Lewin, *City Resolves Legal Battle over Forcing Students out,* NEW YORK TIMES, June 19, 2004, at B4.

[36]Lewin, *supra* note 30; Best, *supra* note 35.

[37]The agreement was modeled after the agreement in *Ruiz* but had some differences. See *R.V.*, 321 F. Supp. 2d at 538, app. A (cf. app. B). *Id.*, app. A.

[38]*R.V.,* 321 F. Supp. 2d at 538.

[39]*Id.*

> Although the Supreme Court has held that education is not, for federal constitutional purposes, a fundamental right, it is universally acknowledged that good schooling for all is essential in a republic, particularly one engaged in global competition for minds and dollars.[40]
>
> Courts must view the *RV* and related cases with utmost seriousness since they involve constitutionally protected rights. They are mandated to ensure that complaining students are not deprived of opportunities to acquire necessary skills and understanding equal to that of other public school students.[41]

The court dismissed the *Ruiz* and *R.V.* cases without prejudice and approved the settlement agreements in the cases. Judge Weinstein also retained (1) "foot-of-the-decree" jurisdiction and (2) jurisdiction to adjudicate any dispute concerning the terms and conditions of the agreements.[42]

Certification of a Class of Students with Disabilities

Shortly after the push-out cases in front of Judge Weinstein were resolved, U.S. District Judge Charles P. Sifton certified a class of "disabled NYC children age three through twenty-one who have been, will be or are at risk of being excluded from school without adequate notice and denied free appropriate education due to suspensions, expulsions, transfers, discharges, removals and denials of access" in an action called *E.B. v. Board of Education*.[43] This case was filed by Advocates for Children on behalf of children with disabilities and their parents. In contrast to the trilogy of push-out cases, which were essentially limited to children connected with three specific schools, *E.B.* involves a class of students throughout the city. In the *E.B.* case, plaintiffs raise a number of claims involving the Department of Education's systemwide failure to protect children with disabilities from illegal school exclusions and raises claims under federal disability statutes as well as constitutional and state-law claims.[44] The parties are currently in the discovery phase, and plaintiffs have secured the assistance of a private law firm to serve as cocounsel.

Against Exclusionary Practices

Although the City's administration may be committed in theory to addressing the problems outlined above and have taken initial steps to curb exclusionary practices, they are but steps along a difficult road. As Judge Weinstein noted, there are "deep-seated socioeconomic, political and educational issues that underlay failures of our educational system" that litigation and advocacy alone cannot solve.[45] Lack of funding, ongoing struggles over union negotiations, overcrowding, and other problems continue to plague New York City's schools.

The efforts described above resulted in some citywide policy changes and generated local and national awareness of the phenomenon of school push-outs. At this writing, data have not been released to Advocates for Children for purposes of assessing whether the procedures are working. The Department of Education has taken some steps to expand programming for overaged, undercredited students, but certain measures, such as a recent restructuring of one of the department's GED programs, also resulted in large numbers of additional discharges.[46] Other efforts—such as the creation of new programs for overaged, undercredited students in the Bronx—may be expanded to serve students citywide.[47]

While the specter of the No Child Left Behind Act continues to loom over our nations' schools, grassroots organizations, parent groups, attorneys, educators and policymakers must monitor their local school systems and take action if schools are engaging in exclusionary practices. National coalitions must be formed to highlight the unintended effects of the Act and to advocate reform of laws and policies that punish schools for trying to educate all students or that provide incentives for schools to push them out of the building.

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[40] *Id.* (citing *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)).

[41] *Id.*

[42] *Id.*

[43] *E.B.*, No. 02 CV 5118 (CPS), 25 NEW YORK LAW JOURNAL 23. The case was originally filed as *N.T. v. Board of Education.* See also Elissa Gootman, *Students' Suit on Special Ed Becomes Class Action,* NEW YORK TIMES, July 30, 2004, at B4.

[44] *Id.* The statutes at issue are the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400–1487), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111).

[45] *R.V.*, 321 F. Supp. 2d at 538.

[46] See David Herszenhorn, *Help Centers for Dropouts Are Closed*, NEW YORK TIMES, Sept. 30, 2004, at B1.

[47] Elissa Gootman, *City Creates New Path to a Diploma,* NEW YORK TIMES, May 29, 2004, at B1.