

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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ZAKUNDA-ZE HANDBERRY; MARLON COLEMAN; JOSE COLON;  
IRVING NOOKS; AUSTIN NUNEZ; CARLOS LUSCZ;  
MICHAEL PICART; CARLOS RIVERA; JOSEPH VALDEZ;  
EUGENE BAILEY; ANTHONY WAGER, individually and on  
behalf of all other persons similarly situated,

Plaintiffs,

- against -

WILLIAM C. THOMPSON, JR.; JERRY CAMMARATA;  
CAROL GRESSER; IRENE IMPELLIZZERI; SANDRA LERNER;  
LUIS REYES; NINFA SEGARRA; RUDOLPH CREW; RICHARD MILLS;  
MICHAEL JACOBSON; ERIC TAYLOR; FREDERICK PATRICK;  
BOARD OF EDUCATION OF THE CITY OF NEW YORK; AND  
THE CITY OF NEW YORK

Defendants.  
-----x

COMPLAINT

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behalf of all others similarly situated

Plaintiffs,

COMPLAINT

AND  
CLASS ACTION

- against -

WILLIAM C. THOMPSON, JR.; JERRY CAMMARATA;  
CAROL GRESSER; IRENE IMPELLIZZERI; SANDRA LERNER;  
LUIS REYES; NINFA SEGARRA; RUDOLPH CREW; RICHARD MILLS;  
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INTRODUCTION

1. Plaintiffs, persons under 21 years old who have not received a high school diploma ("school-eligible persons") in the custody of the New York City Department of Correction ("DOC"), bring this action on their own behalf, and on behalf of others similarly situated, in order to receive the educational services guaranteed them by law. Defendants currently provide, conservatively, less than half of school-eligible persons incarcerated by DOC with mandated educational services. Even those who do receive some educational services are denied the special educational services required by law for persons who suffer from disabilities that affect their ability to learn, a group estimated by DOC to be at least 40% percent of their population.

2. By denying all educational services to a substantial portion of school-eligible persons, and by denying individualized special education to all school-eligible persons with disabilities

that affect their ability to learn, defendants are violating plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 et seq., and implementing regulations; 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and implementing regulations; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; and New York law and regulations.

3. Plaintiffs seek declaratory and injunctive relief against defendants, requiring them to provide all mandated educational services to all school-eligible persons. Plaintiffs are suffering harm from defendants' actions, omissions, policies and practices in failing to provide mandated educational services to school-eligible persons, and will continue to suffer harm unless defendants are enjoined.

#### JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3), and 1343(4) and 20 U.S.C. §§ 1415(e)(2) and (e)(4). This Court has supplemental jurisdiction, under 28 U.S.C. § 1367, over plaintiffs' state law claims against several of the administrators of DOC, the Board of Education of the City of New York and its members and administrators, and the City of New York because the state law claims arise out of the same case and controversy as the federal law claims -- that is, defendants' failure to provide all school-eligible persons incarcerated in City jails with the full range of legally required educational services. CLASS

#### ACTION ALLEGATIONS

5. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named plaintiffs bring this class action on their own behalf and on behalf of all other persons who are or will be similarly situated. The plaintiff class consists of all school-eligible persons in the custody of DOC who do

not receive required regular and special education services.

6. The class is so numerous, and so fluid, that joinder of all members is impracticable. Upon information and belief, there are at least two thousand persons under 21 in the custody of DOC. Upon information and belief, of these, more than half are not receiving mandated educational services. Upon information and belief, approximately 40% of persons in DOC custody have previously been classified as being in need of special education and related services. Consequently, the number of persons under 21 in need of special education is almost one thousand inmates. Further, the population of school-eligible persons in the custody of DOC changes continually, especially among the pre-trial detainee population.

7. There are questions of law and fact common to the class. All of the plaintiffs with disabilities affecting their ability to learn have the same federal statutory right to individually tailored special education services. All of the plaintiffs have the same right under state law and under Federal due process to be offered a free public education until they reach their 21st birthdays, or receive a high school diploma, or its equivalent, unless they are lawfully expelled from school.

8. The claims of the named plaintiffs are typical of the claims of the class. Their claims arise from the same conduct -- the denial of regular education and individually tailored special education to large numbers of school-eligible persons in the custody of DOC -- that gives rise to the absentee members' claims.

9. The named plaintiffs will fairly and adequately protect the interests of the class. The named plaintiffs know of no conflicts of interest among class members. Plaintiffs are represented by counsel experienced in civil rights class action litigation focussing on conditions in New York City jails and New York State prisons.

10. By denying regular education to whole categories of school-eligible persons in the custody of DOC, and denying individually tailored special education to all school-eligible persons, defendants have acted on grounds generally applicable to the class, making injunctive and declaratory relief appropriate with respect to the class as a whole.

## PARTIES

### Plaintiffs

11. The plaintiff class consists of school-eligible persons in the custody of DOC who do not receive required regular and special educational services. Persons in the custody of DOC include both persons being held before trial on a criminal charge ("pretrial detainees"), and persons convicted of a criminal misdemeanor and serving a sentence of one year or less. Just over 80% of persons being held by DOC are pretrial detainees. 1 The individual plaintiffs who bring this action on their own behalf and as class representatives are as follows:

12. ZAKUNDA-ZE HANDBERRY was born on November 16, 1978, and is 17 years old at the time of the filing of this Complaint. He has been confined in a protective custody housing area at the Adolescent Reception and Detention Center ("ARDC") since September of 1995. He does not have his GED or high school diploma, yet does not attend school. He would like to attend school. Before his incarceration, Mr. Handberry attended Franklin Lane High School in Queens, where he was in the 12th grade.

13. MARLON COLEMAN was born on February 7, 1996, and is 20 years old at the time of the filing of this Complaint. Mr. Coleman has been confined at the George R. Vierno Center ("GRVC") since approximately February, 1996. He would like to attend school, but has never been told that he has the right to attend school if he desires. He does not have a high school diploma or a G.E.D. Before being incarcerated, he last attended a GED program in

Brooklyn, where he was in the 10th grade.

14. JOSE COLON was born on May 29, 1976, and is 20 years old at the time of the filing of this Complaint. He has been confined at GRVC since approximately mid-March, 1996, and before that was confined at the Bronx House of Detention for two months. He has not attended school at either jail. He is housed in a high classification area at GRVC. Mr. Colon does not have a high school diploma or a GED, and would like to attend school. He has asked to attend school but has not been allowed to go. Before his incarceration, he attended DeWitt Clinton High School in the Bronx, New York, where he was in the 9th grade.

15. IRVING NOOKS was born on March 16, 1979, and is 17 years old at the time of the filing of this Complaint. He is housed at ARDC, where he has been confined in both the punitive segregation unit and a general population area. He does not have his GED or a high school diploma, yet has not attended school at ARDC. He would like to attend school. Mr. Nooks last attended school at Van Buren High School, where he was in special education classes, and was in the 9th grade.

16. AUSTIN NUNEZ was born on July 7, 1977, and is 19 years old at the time of the filing of this Complaint. He has been confined at ARDC for approximately twenty-one months. He attended school while in general population during the first nine months of his incarceration, where he was in the 11th grade; when moved to punitive segregation after that he has no longer been allowed to attend school. He does not have his diploma or GED, and would like to go to school. Before being incarcerated, he was in the 10th grade in a high school in the Bronx.

17. CARLOS LUSCZ was born on July 11, 1976, and is 20 years old at the time of the filing of this Complaint. He has been confined at GRVC for approximately five months and has not been given an opportunity to attend school. Mr. Luszcz does not have his high school

diploma or his GED and would like to attend school. Since being incarcerated, he attended night school at Queens High School in Flushing, NY, and before that was in the 10th grade at Dickinson High School in New Jersey.

18. MICHAEL PICART was born on September 14, 1975 and is 20 years old at the time of the filing of this Complaint. He has been confined at GRVC for approximately five months, and before that was held at the Brooklyn House of Detention. He does not have his high school diploma or GED, would like to attend school, and has asked to go to school on numerous occasions. Mr. Picart has not been allowed to attend school. Before he was incarcerated, Mr. Picart attended Bushwick High School in Brooklyn, where he was in the 10th grade.

19. CARLOS RIVERA was born on January 1, 1976, and is 20 years old at the time of the filing of this Complaint. He has been confined at GRVC for nine months at the time of the filing of this Complaint, and does not attend school. He does not have his high school diploma or GED, and would like to attend school. He has asked to attend school several times, and has received no response. Before being incarcerated, he attended special education classes at the Soledad Humana in New York City.

20. JOSEPH VALDEZ was born on January 5, 1976, and is 20 years old at the time of the filing of this Complaint. He has been confined at GRVC for six months; prior to that he was confined at the Brooklyn House of Detention. He does not attend school, although he has asked to go on several occasions. He does not have his GED or high school diploma, and would like to attend school. Prior to his incarceration, he attended I.S. 369 in Brooklyn. He was in the 8th grade, and attended special education classes.

21. EUGENE BAILEY was born on November 24, 1978, and is 17 years old at the time of the filing of this Complaint. He has been confined at the North Infirmery Command ("NIC")

for approximately three and one months at the time of the filing of this Complaint. Mr. Bailey does not attend school, and would like to do so. He has asked to attend school on several occasions but has been told that no educational services are available at NIC. He does not have his high school diploma or his GED. Before his incarceration, he attended school at the Lillian Rakis Vocational School in Brooklyn, which is school dedicated to students with behavioral disabilities. He was in the 10th grade.

22. ANTHONY WAGER was born on January 14, 1976, and is 20 years old at the time of the filing of this Complaint. He has been confined at the GRVC for approximately five months; before that he was confined at the Otis Bantum Correctional Facility ("OBCC") for approximately 3 months. During this time, he was only permitted to attend school once; after that he was never called back. Mr. Wager does not have a high school diploma or a Ged. Before being incarcerated, he attended Seward Park High School in New York, New York. He was in the 12th grade.

#### Defendants

23. Defendant the BOARD OF EDUCATION OF THE CITY OF NEW YORK ("the Board") is a "local educational agency" as defined in 20 U.S.C. § 1401(8). Upon information and belief, the Board receives federal financial assistance under IDEA. It is therefore responsible for providing school-eligible persons with disabilities within New York City -- including those incarcerated in City correctional facilities -- with special educational programs administered in compliance with federal and state laws and regulations. It is also responsible for providing regular educational services in compliance with federal and state laws and regulations to all school-eligible persons in New York City, including those incarcerated in City jails.

24. Defendants WILLIAM C. THOMPSON, JR., JERRY CAMMARATA, CAROL

GRESSER, IRENE IMPELLIZZERI, SANDRA LERNER, LUIS REYES, and NINFA SEGARRA are members of the Board and are charged with carrying out the duties of the Board. They are responsible therefore for ensuring the provision of regular and special educational services in compliance with federal and state laws and regulations to all school-eligible persons, including those incarcerated in the City jails. They are sued in their official capacities.

25. Defendant RUDOLPH CREW is the Chancellor of the Board. He is the Chief Executive of the New York City School District, and is therefore responsible for ensuring the provision of special educational programs and regular educational programs in compliance with federal and state laws and regulations to all school-eligible persons, including those incarcerated in the City jails. He is sued in his official capacity.

26. Defendant RICHARD MILLS is the Commissioner of the New York State Education Department ("NYSED"), which is a recipient of federal financial assistance under the Individuals with Disabilities Act., 20 U.S.C. §§ 1400 et seq. ("IDEA"). NYSED is a state educational agency as that term is defined in 20 U.S.C. § 1401 (7). As Commissioner, Mills is responsible for ensuring that school-eligible persons with disabilities in New York State are provided with educational programs administered in compliance with federal and state laws and regulations. Mills is sued in his official capacity.

27. Defendant MICHAEL JACOBSON is the Commissioner of DOC. As Commissioner, Jacobson has overall responsibility for the establishment, operation and administrative control of New York City correctional facilities, and is responsible for ensuring that school-eligible persons who have not received high school diplomas who are in DOC custody receive educational services in compliance with federal and state laws and regulations. He is sued in his official capacity.

28. Defendant ERIC TAYLOR is Chief of the Department of DOC. As the highest ranked uniformed member of DOC, Taylor is responsible for all matters relating to the supervision, oversight and discipline of the uniformed staff, and is responsible for ensuring that such staff follow federal and state laws and regulations regarding provision of educational services. He is sued in his official capacity.

29. Defendant FREDERICK PATRICK is the Deputy Commissioner for Programs in DOC. He is responsible for administering and implementing all programs within DOC, including educational programs for school-aged persons in DOC custody, in compliance with federal and state laws and regulations. He is sued in his official capacity.

30. Defendant THE CITY OF NEW YORK is responsible for providing mandated educational services, including special education services to disabled students, in accordance with federal and state rules and regulations, to all school-eligible persons residing in the City of New York, including those incarcerated in the City jails.

## STATUTORY AND REGULATORY FRAMEWORK

### Federal Statutes and Regulations

#### Individuals with Disabilities Education Act

31. Under IDEA, 20 U.S.C. §§ 1400 et seq., the New York State Education Department ("NYSED") and the New York City Board of Education ("the Board") have a duty to provide appropriate educational services to persons with disabilities who are between the ages of three and 21. 20 U.S.C. § 1412(2)(B).

32. This duty extends to school-eligible persons with disabilities who are incarcerated in correctional facilities. 20 U.S.C. § 1401(16), 34 C.F.R. § 300.2(b)(4).

33. IDEA defines "disabilities" as "mental retardation, hearing impairments . . . speech

or language impairments, visual impairments . . . serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities" who, "by reason thereof need special education and related services." 20 U.S.C. §§ 1401(a)(1)(A). "Specific learning disability" is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." The statute specifically includes in this definition conditions such as dyslexia and developmental aphasia. 20 U.S.C. § 1401(B)(15).

34. The NYSED receives funds from the federal government under IDEA. In order to receive such funds, IDEA requires the State, through NYSED, to set forth and follow a plan that must, among other things,:

i) Identify, locate and evaluate all children residing in the State who are disabled and who are in need of special education and related services. 20 U.S.C. § 1412(1)(C).

ii) Offer a free appropriate public education ("FAPE") to all children with disabilities between the ages of 3 and 21. 20 U.S.C. § 1412(2)(B).

iii) Conform each person's education to an Individualized Education Plan ("IEP"), 20 U.S.C. § 1401(18), which is defined as a written statement developed for each child including:

(A) a statement of the present levels of educational performance of each child,

(B) a statement of annual goals, including short-term instructional objectives,

(C) a statement of the specific educational services to be provided to such child and the extent to which such child will be able to participate in regular educational programs,

(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter . . . including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting,

(E) the projected date for initiation and anticipated duration of such services and

(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. 20 U.S.C. § 1401(20)

iv) Establish procedural safeguards for children with disabilities, consisting, at least, of notice to parents or guardians informing them of their procedural rights whenever the Board proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a FAPE to the child, including the right to present complaints, and the opportunity for an impartial due process hearing on such complaints. 20 U.S.C. §§ 1412(5); 1415(1)(C)(D)(E) and (2).

v) Assure that local school boards who receive funding from NYSED for special education are in compliance with all requirements of IDEA. 20 U.S.C. § 1412 (6).

vi) Establish and maintain standards consistent with state certification and licensing for teachers in special education and related services. 20 U.S.C. § 1413(14).

### 35. The

Board receives federal funds under IDEA from the NYSED. Upon information and belief, the Board also receives some funds under IDEA directly from the federal government. As a requirement of receiving such funds, the Board must, among other things,

i. Provide that all children residing within its jurisdiction who are disabled and in need of special education and related services are identified, located, and evaluated. 20 U.S.C. § 1414 (a)(1)(A).

ii. Provide for a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services. Id.

iii. Provide assurance that it will establish or revise, whichever is appropriate, an IEP for each child with a disability, at the beginning of the school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually. 20 U.S.C. § 1414 (a)(5).

iv. Consult with individuals involved in or concerned with the education of school-age children with disabilities, including parents of such children. 20 U.S.C. §§ 1412 (7), 1414(a)(1)(C)(iii);

v. Maintain records of the IEPs of each child with a disability so that the IEPs can be reviewed and, if necessary, revised. 20 U.S.C. §§ 1412(4); 1414(6);

vi. Maintain procedural safeguards for children with disabilities, consisting, at least, of notice to parents or guardians informing them of their procedural rights whenever the Board proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child, and including the right to present complaints, and the opportunity for an impartial due process hearing on such complaints. 20 U.S.C. §§ 1412(5)(A); 1414(a)(6)(7); 1415(1)(C)(D)(E) and (2).

#### The Americans With Disabilities Act

36. The Americans with Disabilities Act (the "ADA"), mandates 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. A "disability" is defined as a "physical or mental impairment that substantially limits one or more of the major life activities."

#### Section 504 of the Rehabilitation Act of 1973

37. Section 504 provides, in pertinent part that "[n]o otherwise qualified individual with

a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance".

#### State Law and Regulations

38. Article 11, § 1 of the New York State Constitution entitles all children in the State of New York to a free public education.

39. N.Y. Educ. Law. § 3205 requires that all minors between 6 and 16 years old attend school, although cities and school district may increase the age of compulsory education from 16 to 17. New York City requires children to attend school until they turn 17. New York City Bd. of Educ. Bylaws § 4.1.

40. Minors who are required to attend school (those 17 and under) are required to do so "upon full time instruction." Educ. Law. § 3205. A daily session of instruction for minors in high school is required to be a minimum of 5 1/2 hours. NYCRR § 175.5(3).

41. N.Y. Educ. Law § 3202(1) entitles all persons between the ages of 5 and 21 who have not received a high school diploma to attend public schools.

42. N.Y. Educ. Law § 3202(7)(a) specifically states that persons under 21 years old who are incarcerated in a correctional facility maintained by the City of New York and who have not received a high school diploma are eligible for educational services.

43. N.Y. Educ. Law § 3202(7)(c) requires correctional facilities maintained by the City of New York to furnish each person eligible for educational services with information concerning the availability of such educational services. 8 NYCRR § 118.5 requires that this notification occur within 10 days after admission. 8 NYCRR § 118.3 requires that an educational evaluation of a youth be done within 10 days of a youth's request for the offered

educational services.

44. Aside from the daily 5 1/2 hours required for minors attending high school, 8 NYCRR § 118.4 states that the amount of instructional time provided to each student in a correctional facility operated by the City of New York shall total not less than three hours per school day, for 15 hours a week. Not less than 10 of the 15 hours must be instruction in reading, mathematics and oral and written communication.

45. 9 NYCRR § 7070.3 requires local correctional facilities to establish written policies and procedures which address, among other things, the allocation and maintenance of classroom space within the facility which promotes a safe and effective learning environment and accommodates the needs of education personnel and eligible youth,<sup>1</sup> procedures for escorting inmates to and from the program by facility staff, and the provision of mandated educational services to eligible youth confined in special housing units.

46. 9 NYCRR § 7070.4(f) requires that after admission, all eligible youth be permitted to request access to educational services at any time during the period of their incarceration.

47. 9 NYCRR § 7070.7(a) requires that eligible youth confined in special housing units shall not be denied access to educational services solely on the basis of their classification status.

48. In order to suspend a student from required instruction for more than five days, a student must be given a "fair" hearing in front of the superintendent of schools, or a hearing officer designated by him or her, in which the student and his or her parents have the right to appear, to have counsel, to question and present witnesses and other evidence on his behalf.

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<sup>1</sup> 9 NYCRR § 7070.2 defines an "eligible youth" for educational services offered by local correctional facilities as a person under 21, who has not received a high school diploma, and who has been or expects to be incarcerated for 10 or more days.

N.Y. Educ. Law § 3214(3)(c).

49. 9 NYCRR § 7070.7(b-h) states that an eligible youth in a correctional facility's participation in educational services shall not be restricted or denied as a result of such youth's involvement in a disciplinary matter unrelated to the youth's participation in the facility's educational program, except when such involvement presents a clear threat to himself/herself, the safety of other inmates and/or the safety of educational staff. The restriction cannot occur except upon written determination by the chief administrative officer, who must specify the facts or reasons underlying the determination. Any such determination must be reviewed, in writing, with comments from the youth's instructors and justifications for continuing the denial of services, every 14 days.

50. N.Y. Educ. Law § 3202(7)(d) requires that upon release from confinement of a person eligible for educational services, the correctional facility must inform him or her that further educational services may be available, and, upon request, contact a school district that the student wishes to attend. These requirements are also found in 8 NYCRR § 118.2(i) and 9 NYCRR § 7070.3(7).

51. N.Y. Educ. Law §§ 4401 et seq. and accompanying regulations, require school districts to provide any school-eligible persons with a handicapping condition with special education. A "handicapping condition" is defined as a mental, physical or emotion reason by which a person is only able to receive appropriate educational opportunities from a program of special education. "Special education" means "specially designed instruction which includes special services and programs. . . to meet the individual education needs of a child with a handicapping condition." N.Y. Educ. Law § 4401(1).

52. 8 NYCRR § 200.6 requires that special education instruction be provided by

appropriately certified and licensed instructors.

## FACTUAL ALLEGATIONS

### Overview of the Custodial Arrangements for 16 through 21 year olds held in DOC Custody

53. Persons 16 years and older, who are being held in custody prior to their trial on a criminal charge brought in New York City, or who are sentenced to one year or less of incarceration for a crime committed in New York City, are held in the custody of DOC. Such inmates are held either in jails on Rikers Island<sup>2</sup> or in jails in the boroughs of Manhattan, Brooklyn, Bronx and Queens ("borough houses").

54. Male pretrial detainees 16 through 18 years old are held at the Adolescent Reception and Detention Center on Rikers Island. 55. Male pretrial detainees 19 and older are held in every jail on Rikers Island and at the borough houses.

- 1) Sentenced male inmates, including those 16 to 21 years of age, are held at the Correctional Institution for Men ("CIFM"). However, sentenced inmates under the age of 19 who are confined to punitive segregation, protective custody, administrative segregation, mental observation housing, homosexual housing, high classification housing,<sup>3</sup> or who are deemed "trouble-makers" by DOC are confined at ARDC.

56. All female inmates, whether pre-trial detainees or sentenced and regardless of age, are housed at the Rose M. Singer Center on Rikers Island ("RMSC").

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<sup>2</sup> There are 10 separate jails on Rikers Island. They are: the Adolescent Reception and Detention Center; the Anna M. Kross Center; the Correctional Institution for Men; the George Motchan Detention Center; the George R. Vierno Center; the James M. Thomas Center; the North Infirmary Command; the Otis Bantum Correctional Center; the Rose M. Singer Center; and the West Facility.

<sup>3</sup> High Classification housing is housing for those with classification scores over a certain level. An inmate's classification score is determined by DOC, and is based on a number of factors, including the severity of the crime with which the inmate is charged, and past and present behavior in custody.

57. Such educational services to adolescent inmates (inmates aged 16 through 18) at ARDC, CIFM and RMSC as are offered are provided by the Board. The Board also runs a small school for 15 to 20 mental observation inmates at the Anna M. Kross Center ("AMKC").

58. Such educational services to inmates over 19 as are offered are provided by private educational organizations such as the Correctional Educational Consortium, John Jay College, and other providers under contract with DOC.

#### SPECIAL EDUCATIONAL SERVICES

59. DOC has acknowledged that 40% of inmates in their custody were previously designated as in need of special educational services.

60. Despite this, special education and related services, as set out in IDEA and N.Y. Educ. Law §§ 4401 et seq., and accompanying regulations, are not offered to school-eligible persons in the custody of DOC who are disabled and/or have handicapping conditions as defined by these statutes.

61. DOC and the Board do not evaluate incoming students to determine if they may be disabled and in need of special education. There is no Committee on Special Education which takes the results of an evaluation and formulates a treatment plan, as required by IDEA and N.Y. Educ. Law §§ 4401 et seq.

62. Neither inmates nor their families are notified that the Board, or DOC, has refused to initiate identification of school-aged persons who are in need of special education and related services, as required under IDEA. 20 U.S.C. § 1415(b)(1)(C). Nor are they notified of the procedural safeguards that exist when such initiation is not done, such as the right to submit a complaint, and to a hearing on the complaint. 20 U.S.C. § 1415(b)(1)(D).

63. Upon information and belief, little or no effort is made to identify those students who

have been certified as requiring special education before their incarceration.

64. Neither the Board, nor the private educational groups DOC contracts with to provide educational services to inmates 19 and over, develops an IEP for the students who are disabled, and require special education, as required by federal and state law. Rather, the Board issues an "interim services plan", which remains in effect only while the student is in DOC custody. The interim services plan simply conforms to the educational services available at Rikers Island, and is not individually tailored to each student's needs.

65. Further, neither the Board nor DOC's private contractors follow IEPs previously developed for school-eligible disabled persons who are now in DOC custody. The Board and DOC do not request or obtain IEPs on file from disabled school-aged inmates' previous educational programs.

66. On information and belief, inmates confined in mental observation units require special education at an even higher rate than 40% of their population. Yet these inmates do not have IEPs prepared for them, and receive no specialized instruction, nor educational services commensurate with their needs and abilities. As noted below in ¶¶ 72, 74 and 82, they in fact receive either no educational services or extremely limited services.

67. Teachers certified and trained in teaching children with disabilities are not provided to instruct school-eligible persons with disabilities who are in the custody of DOC, violating 20 U.S.C. §1413(14) and 8 NYCRR § 200.6.

## REGULAR EDUCATION SERVICES

### Male Inmates Aged 16 through 18

#### Education at the Adolescent Reception and Detention Center

68. The Adolescent Reception and Detention Center ("ARDC") on Rikers Island houses

male inmates ages 18 and under. There are approximately 1260 such school-eligible persons housed at ARDC.<sup>4</sup> Regular educational programming, which is mandatory for persons up to age 17 by N.Y. Educ. L. § 3205, and which is required to be offered to persons up to age 21 under § 3202(7), is not provided to almost 400 of such persons. An additional approximately 166 inmates go to school for only limited periods of time. This comprises approximately 45% of the total school-eligible population at ARDC.

69. The roughly 400 inmates -- both pre-trial and sentenced -- who are not provided any schooling are housed in special housing units, and in a few general population units. The special housing units include punitive segregation, certain units of protective custody, administrative segregation, homosexual housing, and high classification housing.

70. DOC and the Board do not follow the expulsion procedure set out in N.Y. Educ. Law. § 3214(3)(c) to deprive each student in the housing areas listed above of their mandated educational services. Nor do they provide a separate written determination as to why each student in the housing areas listed above is not permitted to attend school, as required by 9 NYCRR § 7070.7 e-f. Rather, it is defendants' policy and practice that inmates housed in these housing areas shall not be offered educational services. 71. The 166 inmates who go to school for only very limited periods of time are held in mental observation and in certain protective custody units. They attend school, at best, only two days a week for two and one-half hours, for a total of 5 hours, instead of the 15 (at least) required by 8 NYCRR § 118.4. Sometimes they are not provided with any educational services for months at a time.

2) Some inmates who start off being permitting to attend school at ARDC are removed

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<sup>4</sup> New Admission inmates, of which there approximately 133, are not eligible to attend school and so are not included in the 1260 population figure.

from school after conduct that would only justify a five or fewer day suspension under N.Y. Educ. Law § 3214(3)(b). This is because DOC does not provide a mechanism for guarding such students for the short term of their suspension while the rest of their housing area, who are accompanied to school by their housing unit correctional officers, are attending school. Instead, such inmates are transferred from a housing area that goes to school to one that does not, without being transferred back.

72. Inmates in mental observation housing are sent to school together as a housing unit, accompanied by their housing area officers. If any mental observation inmates cannot sit throughout the school day, the whole housing area is, on occasion, rejected from school.

73. Upon information and belief, inmates who are sent to school can be removed for alleged misbehavior, as determined by DOC personnel, without the concurrence of Board personnel, and without following the expulsion procedures set forth in N.Y. Educ. Law § 3214(b)(3), including a "fair" hearing before a hearing officer. DOC personnel remove inmates from school for reasons not included in the Board's own behavior code for the ARDC school, for example, for falling asleep in class or making drawings that DOC staff do not like. Because attendance in school is dependent on an inmate's housing area, DOC also excludes inmates from school simply by changing an inmate's housing unit.

#### The North Infirmary Command

74. At the North Infirmary Command (hereafter "NIC") no educational services are offered, despite the fact that male inmates 16 to 18 years old are housed there if they suffer from an illness, injury, disability, or are wheel-chair bound.

#### Both ARDC and the North Infirmary Command

75. Upon discharge, DOC and the Board do not provide discharge planning, as required

by N.Y. Educ. Law § 3202(7)(d), except to some city-sentenced adolescents. Therefore students are not systematically informed that further educational opportunities are available to them, nor is notification to an eligible school of a student's interest in attending that school made.

#### Male Inmates 19 and 20 Years Old

76. Male inmates 19 years of age and over are housed at every jail on Rikers Island, except RMSC. Virtually no 19 or 20 year old inmates are provided with educational services at any of the male jails on Rikers Island, despite the fact that such inmates are required under N.Y. Educ. Law § 3202 (7) to be offered, and then given, such services.

77. No educational services at all are provided at the Anna M. Kross Center ("AMKC"), a jail with a population of approximately 2300 inmates of whom 99 are under 21, with the exception of a class for 15 to 20 mental observation inmates. At NIC, where inmates suffering from illness or disabilities are housed, no educational services are provided, even though inmates under 21 are housed there.

78. In the other facilities housing males aged 19 and over, there are not nearly enough classes to accommodate the population of 19 and 20 year old inmates for whom schooling is required, if requested. At the James A. Thomas Center ("JATC"), a jail with a population of approximately 1021, classes are offered to a maximum of fifty students. At the George Motchan Detention Center ("GMDC"), educational services are offered to a maximum of 75 general population inmates and to an additional 100 inmates (who are not necessarily under 21) involved in a substance abuse program, or 175 inmates out of a population of approximately 2311, of whom approximately 213 are under 21. At the George R. Vierno Center, educational services are offered to 45 persons in a jail with a population of approximately 1265, of whom approximately 100 are under 21. At the Otis Bantum Correctional Center (hereafter "OBCC") 30

inmates receive educational services in a jail whose population is 1669. ARDC has a capacity of 1144 males nineteen and over, including 300 sentenced adults. Approximately 165 of these inmates at ARDC are 19 and 20 years old. At best only 50 inmates nineteen and over are provided with an opportunity to attend school, but much of the time no educational services whatsoever are provided to them. The West Facility has a population of 541. Only a maximum of 25 students are provided with educational services. At the Correctional Institute for Men, approximately 2079 sentenced males inmates are confined, of whom approximately 178 are 19 and 20. Educational services are provided to a maximum of only 72 inmates over 18.

79. Throughout the jails housing males 19 and over, school-aged persons are not singled out by the Board or DOC and advised of the existence of school and told that they have a right to attend if they do not have a high school diploma, as is required by N.Y. Educ. Law § 3202(7)(c) and 8 NYCRR § 118.5. Instead, only a small number of inmates, without regard for age, are advised of the existence of school and how they can attend it.

80. Inmates between 18 and 21 confined in special housing areas are denied educational services throughout the system. These areas include punitive segregation, administrative segregation, protective custody, mental observation,<sup>5</sup> and homosexual housing.

81. DOC disregards the expulsion procedure set out in N.Y. Educ. Law § 3214 in depriving school-aged special housing prisoners of mandated educational services. Nor does DOC provide a separate written determination as to why each student in special housing areas is not permitted to attend school, as required by 9 NYCRR § 7070.7 e-f. Rather, it is DOC's policy, practice and intention to deny educational services to inmates housed in these areas.

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<sup>5</sup> With the exception of 15 to 20 mental observation inmates housed at AMKC, who are served by a Board school there.

82. DOC interferes with the provision of educational services in several other ways. DOC personnel make individual determinations as to what inmates will be allowed to attend class, which determinations are not based on any identifiable factors, nor must they be logged or justified in any way. Further, insufficient escorts are provided to take students to and from school areas so that individuals, and sometimes whole housing areas, are unable to attend classes because they cannot be escorted there. This conduct violates 9 NYCRR § 7070.5, which makes it clear that local correctional facilities have a duty to escort inmates to and from educational services. In areas where no escort is required, DOC issues insufficient passes so that a number of inmates cannot attend school.

83. Even at those jails where educational services are provided, the services are extremely limited. At JATC, GRVC, GMDC and OBCC, educational services are offered only four times per week for three hours a day. At ARDC, classes are offered 2 1/2 hours a day. At West Facility and CIFM, classes are offered only three days a week for three hours a day. No facilities offer the 15 hours of weekly instruction required by 8 NYCRR § 118.4(b).

84. The space made available by DOC to the educators at these jails is often inadequate. Virtually all of the educational programs have waiting lists and are over-enrolled. At the West Facility, for example, no dedicated educational space is available; rather, office space is utilized for the educational programs that are offered, in violation of 9 NYCRR § 7070.3(c)(1), which requires that a correctional facility allocate appropriate classroom space. 85. Upon discharge, discharge planning, as required by N.Y. Ed. Law § 3202(7)(d), is not given except to some city-sentenced adolescents. Therefore students are not systematically informed that further educational opportunities are available to them, nor is notification to an eligible school of a student's interest in attending that school made.

## The Borough Houses

86. Upon information and belief, virtually no inmates under the age of 21 housed in the borough houses are provided with educational services.

87. At the Brooklyn House of Detention, educational services are provided to a maximum of 30 inmates, although approximately 800 inmates are confined there.

88. At the Manhattan House of Detention, educational services are provided to a maximum of 20 inmates, although approximately 600 inmates are confined there.

89. At the Queens House of Detention, educational services are provided to a maximum of 20 inmates, although approximately 500 inmates are confined there.

90. At the Bronx House of Detention, educational services are provided to a maximum of 20 inmates, although approximately 450 inmates are confined there.

91. No inmates confined in special housing units of any kind at the borough houses, such as the unit for high classification inmates at the Brooklyn House of Detention, are permitted to attend school.

92. In the borough houses, as at Rikers, school-aged persons are not singled out by the Board or DOC, advised of the existence of educational services and told that they have a right to attend if they do not have a high school diploma, as is required by N.Y. Educ. Law § 3202 (7)(c) and 8 NYCRR § 118.5. Instead, upon information and belief, only a small number of inmates, without regard for age, are advised of the existence of school and how they can attend it.

93. Upon information and belief, inmates are not provided with 15 hours of instruction a week required by 8 NYCRR § 118.4. Nor are inmates provided with the instruction in reading mathematics and oral and written communication also required by this section.

94. The space made available by DOC for educational services at these jails is

inadequate, in violation of 9 NYCRR § 7070.3(c)(1), which requires a correctional facility to allocate appropriate classroom space.

95. Upon discharge, discharge planning, as required by N.Y. Ed. Law § 3202(7)(d), is not given. Therefore students are not systematically informed that further educational opportunities are available to them, nor is notification to an eligible school of a student's interest in attending that school made.

#### Female Inmates

96. All female inmates, whether pre-trial or sentenced and regardless of age, are housed at RMSC. Approximately 1780 inmates are confined at RMSC, of whom 82 are under 21.

97. School-eligible female inmates at RMSC housed in special housing areas are not provided with mandated educational services. These areas include disciplinary segregation, protective custody, mental observation housing, and administrative segregation.

98. DOC does not follow the expulsion procedure set out in N.Y. Ed. Law § 3214 in depriving each student in the housing areas listed above of their mandated educational services. Nor does DOC provide a separate written determination as to why each student in the housing areas listed above is not permitted to attend school, as required by 9 NYCRR 7070.7 e-f. Rather, it is DOC's policy, practice and intention that inmates housed in these housing areas shall not be offered educational services.

99. Sentenced female inmates over 18 who are unable to attend educational programs during the day because of work assignments are provided only very limited access to educational services. Only 50 women over eighteen are provided with educational services. An additional small number of women receive training in conflict resolution and vocational training, including baking and laundry services. Classes are provided only three days a week for three hours,

violating 8 NYCRR § 118.4(b), which requires instruction for fifteen hours a week.

100. The space available for educational services at RMSC is inadequate. Inmates over eighteen are continually turned away from educational programs. This violates 9 NYCRR § 707.3(c)(1), which requires that a correctional facility allocate appropriate classroom space within a facility.

101. Upon discharge, discharge planning, as required by N.Y. Educ. Law § 3202(7)(d), is not given. Therefore students are not systematically informed that further educational opportunities are available to them, nor is notification to an eligible school of a student's interest in attending that school made.

### LEGAL CLAIMS

#### First Claim: Due Process

102. By refusing to provide educational services to all 16 and 17 year old persons in the custody of DOC, and by refusing to offer, and then provide, educational services to all 18, 19 and 20 year old school-eligible persons, without invoking the expulsion provisions set forth under New York law, defendants have deprived plaintiffs of mandated educational services -- a state-created property right -- without due process of law.

#### Second Claim: Equal Protection

103. By intentionally failing to provide or to ensure the provision of mandated educational services, including regular and special education to school-eligible persons in the custody of DOC, while providing such services to school-eligible persons not in the custody of DOC, defendants have violated and continue to violate plaintiffs' rights to the equal protection of the laws.

#### Third Claim: Individuals with Disabilities Education Act

104. By failing to identify, evaluate, recommend and then provide a free appropriate public education, including individualized education programs and special education and related services, to persons within the custody of DOC who are under 21 and disabled, as defined by the Individuals with Disabilities Education Act, and by failing to provide procedural safeguards specified in the statute and in the state plan implementing IDEA, defendants have violated and continue to violate rights secured by 20 U.S.C. Section 1400 et seq., and its implementing regulations at 34 C.F.R. Sections 300 et seq.

Fourth Claim: Section 1983

105. By failing to identify, evaluate, recommend and then provide a free appropriate public education, including individualized education programs and special education and related services, to persons within the custody of DOC who are under 21 and disabled, as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and by failing to provide procedural safeguards specified in the statute and in the state plan implementing IDEA, defendants, who are state actors, have violated and continue to violate rights secured by the laws of the United States, in violation of 42 U.S.C. § 1983.

Fifth Claim: Americans with Disabilities Act

106. By failing to provide and/or ensure the provision of appropriate regular and special education to persons under 21 in the custody of DOC who are disabled, defendants have denied such persons the benefits of the educational services and programs provided by the State and the City of New York, who are public entities.

Sixth Claim: Section 504 of the Rehabilitation Act

107. By failing to provide and/or ensure the provision of appropriate regular and special education to persons under 21 in the custody of DOC who are disabled, defendants have

discriminated and continue to discriminate solely by reason of plaintiffs' disabilities, in violation of § 504 of the Rehabilitation Act, 29 U.S.C. § 794.

Seventh Claim: State Laws and Regulations

108. By failing to provide all school-aged persons in the Department of Correction who have not received a high school diploma with appropriate educational services, defendants the Board of Education of the City of New York, Thompson, Cammarata, Gresser, Impellizzeri, Lerner, Reyes, Segarra, Crew, Jacobson, Taylor, Patrick and the City of New York have violated and continue to violate plaintiffs' rights secured by the New York Constitution, Article 11, Section 1; N.Y. Ed. Law Sections 3202, 3205, 4401, and accompanying regulations.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully ask that this Court:

1. Assume jurisdiction over this action;
2. Certify this action as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
3. Issue a declaratory judgment declaring that defendants' actions, omissions, policies and practices violate the United States Constitution, IDEA, 20 U.S.C. §§ 1400 et seq., and accompanying regulations; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. and accompanying regulations; the New York State Constitution; and New York Education Law §§ 3202, 3205 and 4201 et seq., and accompanying regulations.
4. Issue an injunction enjoining defendants, their agents, employees, successors in office and assigns from engaging in the unconstitutional and unlawful actions, omissions, policies and practices complained about.
5. Direct defendants to develop and submit a plan to the Court, within 90 days of the date

of the order, that will ensure that all school-eligible persons in the custody of DOC will receive mandated educational services, including special education.

6. Retain jurisdiction over this action until implementation of this Court's decree has been completed;

7. Award to plaintiffs reasonable attorneys' fees and costs of this action, pursuant to 42 U.S.C. § 1988.

8. Award such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
August 14, 1996

Respectfully submitted,

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