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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

M.A. on behalf of E.S., M.A., A.T. on behalf
of G.T., A.T., G.L. on behalf of A.O., G.L.,
H.M. on behalf of M.M., H.M., O.J. on behalf
O.D.J., O.J., A.E. on behalf of A.J.E., and A.E.,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

NEWARK PUBLIC SCHOOLS, NEW JERSEY
DEPARTMENT OF EDUCATION,
VITO A. GAGLIARDI, SR., Commissioner,
New Jersey Department of Education, in his
official and individual capacities, BARBARA
GANTWERK, Director, Office of Special
Education Programs, New Jersey Department
of Education, in her official and individual
capacities, MELINDA ZANGRILLO,
Coordinator of Compliance, Office of Special
Education Programs, New Jersey Department
of Education, in her official and individual
capacities,

Defendants.

Civil Action No. _____

Hon. _____

COMPLAINT

Plaintiffs M.A. on behalf of E.S., M.A., A.T. on behalf of G.T., A.T., G.L. on behalf of A.O., G.L., H.M. on behalf of M.M., H.M., O.J. on behalf of O.D.J., O.J., A.E. on behalf of A.J.E., and A.E., individually and on behalf of all others similarly situated, by their attorneys the Education Law Center (“ELC”) and Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., for their complaint, allege as follows:

PARTIES

1. Plaintiff E.S. is a child with a disability who is being denied special education services by Defendants as a result of Defendants’ failure to identify, evaluate and provide him with special education services. E.S. brings this action by his mother M.A.

2. Plaintiff M.A. is the mother of E.S., a child with a disability who is eligible for the services and protections of IDEA. M.A. resides with E.S. at 315 North 12th Street in the City of Newark, County of Essex, State of New Jersey.

3. Plaintiff G.T. is a child with a disability who is being denied special education services by Defendants as a result of Defendants’ failure to identify, evaluate and provide him with special education services. G.T. brings this action by his mother A.T.

4. Plaintiff A.T. is the mother of G.T., a child with a disability who is eligible for the services and protections of IDEA. A.T. resides with G.T. at 7 Roosevelt Avenue, 2nd Floor in the City of Newark, County of Essex, State of New Jersey.

5. Plaintiff M.M. is a child with a disability who was denied special education services by Defendants for a period of two years as a result of Defendants’ failure to identify, evaluate and provide him with special education services. M.M. brings this action by his mother H.M.

6. Plaintiff H.M. is the mother of M.M., a child with a disability who is eligible for the services and protections of IDEA. H.M. resides with M.M. at 124 Main Street in the City of Newark, County of Essex, State of New Jersey.

7. Plaintiff A.O. is a child with a disability who was denied special education services by Defendants for a period of four years as a result of Defendants' failure to identify, evaluate and provide him with special education services. A.O. brings this action by his mother G.L.

8. Plaintiff G.L. is the mother of A.O., a child with a disability who is eligible for the services and protections of IDEA. G.L. resides with A.O. at 21 North 11th Street in the City of Newark, County of Essex, State of New Jersey.

9. Plaintiff O.D.J. is a child with a disability who was denied special education services by Defendants for a period of two years as a result of Defendants' failure to identify, evaluate and provide him with special education services. O.D.J. brings this action by his father O.J.

10. Plaintiff O.J. is the father of O.D.J., a child with a disability who is eligible for the services and protections of IDEA. O.J. resides with O.D.J. at 4 Lexington Street, Apartment #2G in the City of Newark, County of Essex, State of New Jersey.

11. Plaintiff A.J.E. is a child with a disability who was denied special education services by Defendants for a period of seventeen months as a result of Defendants' failure to identify, evaluate and provide him with special education services. A.J.E. brings this action by his mother A.E.

12. Plaintiff A.E. is the mother of A.J.E., a child with a disability who is eligible for the services and protections of IDEA. A.J.E. resides with A.E. at 816 South 11th Street, Apartment #6B in the City of Newark, County of Essex, State of New Jersey.

13. As residents of Newark, all Plaintiffs are children, or the parents of children, entitled to the remedies provided by the New Jersey Supreme Court in its rulings in the Abbott v. Burke decisions. See, e.g., Abbott v. Burke, 119 N.J. 287, 395 (1990)(“Abbott II”).

14. Defendant Newark Public Schools is the body corporate within the State of New Jersey charged with the conduct, supervision, and management of the public schools for the City of Newark, and is the “local educational agency” established to provide special education services to children with disabilities residing in Newark pursuant to IDEA. Newark receives federal financial assistance for its educational programs, including funds under IDEA. Its administrative offices are located at 2 Cedar Street in the City of Newark, County of Essex, State of New Jersey.

15. Newark is currently a State-operated school district pursuant to N.J.S.A. 18A:7A-34, but remains a corporate entity pursuant to N.J.S.A. 18A:7A-37, and liable to suit pursuant to N.J.S.A. 18A:7A-39(b).

16. In addition, Newark is an “Abbott district” pursuant to the Supreme Court’s rulings in Abbott v. Burke. See, e.g., Abbott v. Burke, 164 N.J. 84, 88-89 (2000) (“Abbott VII”) (finding that Newark is one of thirty poor urban districts in the State of New Jersey offering a constitutionally defective education in violation of the “thorough and efficient clause” of the New Jersey Constitution).

17. Defendant DOE is the state agency established to supervise the provision of public education to children in New Jersey, and is the “state educational agency” established to

oversee the provision of special education services to children with disabilities in New Jersey pursuant to IDEA. DOE receives federal funds under IDEA. Its offices are located at 100 Riverview Plaza, Route 29 in the City of Trenton, County of Mercer, State of New Jersey.

18. Defendant Vito A. Gagliardi, Sr. is the Commissioner of Education and an employee of DOE. The Commissioner of Education is the chief executive school officer of New Jersey who supervises all public schools in the state and administers regulations for the provision of special education to children with disabilities. Defendant Gagliardi is being sued in his official and individual capacities.

19. Defendant Barbara Gantwerk is the Director of the Office of Special Education Programs within DOE and an employee of DOE. Defendant Gantwerk is responsible for a) overseeing the implementation of special education law to ensure that children with disabilities in New Jersey receive full educational opportunities; b) monitoring the delivery of special education programs throughout the State; and c) administering all federal disability funds received by the State for educating children with disabilities ages three through twenty-one. Defendant Gantwerk is being sued in her official and individual capacities.

20. Defendant Melinda Zangrillo is the Coordinator of Compliance of the Office of Special Education Programs within DOE and an employee of DOE. Defendant Zangrillo is being sued in her official and individual capacities.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this case pursuant to a) 20 U.S.C. § 1415(i)(3)(A) in that claims are asserted under IDEA, b) 28 U.S.C. § 1331 in that claims are asserted under the laws of the United States, and c) 28 U.S.C. § 1343 in that claims are asserted under laws providing for the protection of civil rights. Declaratory relief is sought pursuant to 28 U.S.C. § 2201 et seq.

22. This Court has personal jurisdiction over Defendants in that they are residents of the state.

23. Venue in this district is proper pursuant to 28 U.S.C. § 1391 as the matter arose in this district, all of the Plaintiffs reside in this district and all of the Defendants reside in this district.

PRELIMINARY STATEMENT

24. This is a class action on behalf of all children with disabilities, ages 3 through 21, who require special education services from Defendant Newark Public Schools (“Newark”) but have not been evaluated for, or provided with, such services. Newark has failed to identify, locate, refer and evaluate Plaintiffs for special education eligibility, has failed to provide Plaintiffs with special education and related services, and has failed to provide Plaintiffs with “compensatory education” to compensate for the educational services of which they were deprived. Defendants New Jersey Department of Education (“DOE”), Vito A. Gagliardi, Sr., DOE Commissioner of Education (“Commissioner”), Barbara Gantwerk, Director of the DOE Office of Special Education Programs and Melinda Zangrillo, Coordinator of Compliance of the DOE Office of Special Education Programs, have likewise failed to provide such services to Plaintiffs. In addition, Defendants DOE, Gagliardi, Gantwerk and Zangrillo have failed to

appropriately monitor Newark’s delivery of special education services and have failed to ensure that Plaintiffs received appropriate relief in response to a complaint investigation request filed pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”).

25. Defendants’ actions and inactions violate IDEA, its implementing federal and state regulations, New Jersey’s special education statute, N.J.S.A. 18A:46-1 et seq., Plaintiffs’ civil rights pursuant to 42 U.S.C. § 1983, and Plaintiffs’ constitutional right to a “thorough and efficient education” pursuant to Art. VIII, § 4, 1 of the New Jersey Constitution.

26. Plaintiffs seek declaratory relief, permanent injunctive relief, compensatory damages for the named plaintiffs, costs, attorneys’ fees and such other relief as the court may deem necessary as redress for Defendants’ illegal discriminatory acts.

DESCRIPTION OF PLAINTIFF CLASS

27. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all present and future children, ages three through twenty-one, and the parents of such children, residing within the Newark public school district, who are or may be eligible for special education and related services pursuant to IDEA and its federal and state implementing regulations and pursuant to New Jersey’s special education statute, but have not been timely identified, located, referred, evaluated, or provided with such services. The class includes all children who are currently on “waiting lists” for special education evaluations and all children who have been provided with special education and related services, but who did not receive such services in a timely manner, due to untimely identification, location, referral, evaluation, or implementation of initial services, and who have not been provided with “compensatory education” to compensate for this unlawful delay.

28. The class consists of hundreds of current children, as well as numerous future unknown children, so numerous as to make joinder of all members impractical.

29. Material questions of fact and law are common to the class, including

- a) whether Defendants violated Plaintiffs' rights under IDEA and New Jersey's special education statute by: i) failing timely to identify and evaluate all children with disabilities within the Newark public school district who require or who may require special education services; ii) failing timely to provide special education services to children determined eligible; and iii) failing to provide compensatory education to all children determined eligible for special education who were not timely identified, evaluated, or provided special education services;
- b) whether Defendants DOE, Gagliardi, Gantwerk and Zangrillo additionally violated Plaintiffs' rights under IDEA and New Jersey's special education statute by i) failing appropriately to monitor and enforce Defendant Newark's timely identification of, evaluation of, and provision of special education services to, children who require or may require such services; and ii) failing to ensure that Plaintiffs received appropriate relief in response to a complaint investigation request filed pursuant to IDEA; and
- c) whether Defendants violated Plaintiffs' right to a "thorough and efficient education" under the New Jersey Constitution and Abbott v. Burke and Plaintiffs' civil rights pursuant to 42 U.S.C. § 1983 by failing to provide Plaintiffs with the required special education services, related services, and compensatory education.

30. The claims of the representative Plaintiffs are typical of the claims of the class. The representative Plaintiffs, like all class members, claim that Defendants have violated their rights under IDEA, its federal and state implementing regulations and New Jersey's special education statute, to be identified, evaluated, and if eligible, provided with special education

services. The representative Plaintiffs, like all class members, also assert that Defendants DOE, Gagliardi, Gantwerk and Zangrillo have failed to appropriately monitor the provision of special education services by Newark and failed to ensure the implementation of appropriate relief to the Plaintiff class through the IDEA complaint investigation process. The representative Plaintiffs, like all class members, additionally claim that Defendants have failed to provide them with a “thorough and efficient education” pursuant to the New Jersey Constitution and as dictated by the Supreme Court of New Jersey in its Abbott v. Burke rulings, and have violated their civil rights in disregard of 42 U.S.C. § 1983.

31. The representative Plaintiffs will fairly and adequately protect the interests of the class as they have no interests antagonistic to those of the class.

32. The representative Plaintiffs' counsel, the Education Law Center, is experienced in civil rights litigation, disability and education law. The representative Plaintiffs' co-counsel, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., is experienced in litigating class actions in a wide range of public interest and constitutional matters. The representative Plaintiffs' attorneys will vigorously prosecute this action on behalf of the entire class.

33. The prosecution of separate actions by individual members of the Plaintiff class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible procedures for accommodating the special education needs of class members by Defendants.

34. The prosecution of separate actions by individual members of the Plaintiff class would create a risk of adjudications with respect to individual class members that would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

35. Defendants have acted and will act on grounds generally applicable to each Plaintiff, making appropriate injunctive and declaratory relief with respect to the Plaintiff class as a whole.

LEGAL FRAMEWORK

36. IDEA requires that eligible children with disabilities receive a “free appropriate public education.” 20 U.S.C. § 1412(a)(1)(A).

37. A “free appropriate public education” is defined as special education and related services that are provided at public expense, meet the standards of the state educational agency, and conform with the child’s Individualized Education Program (“IEP”). 20 U.S.C. § 1401(8).

38. New Jersey’s special education statute states that “[i]t shall be the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as handicapped under this chapter.” N.J.S.A. 18A:46-13.

39. IDEA mandates that each state have in place policies and procedures to ensure that all children with disabilities who are in need of special education and related services, including those attending private schools, are identified, located, evaluated and determined eligible for, and provided with, special education services. 20 U.S.C. §§ 1412(a)(3), (4); 34 C.F.R. §§ 300.125, 300.126, 300.128.

40. New Jersey’s special education regulations, which are intended to implement IDEA, require that each school district and its employees be responsible for the “location,” “referral,” “identification,” “evaluation” and “determination of eligibility” of, and provision of “educational programs and related services” to, children with disabilities, including those attending nonpublic schools, N.J.A.C. 6A:14-3.1(a), -3.3, -3.7, -4.1, -5.1, and that each school

district develop written procedures for the location and referral of such children. N.J.A.C.

6A:14-3.3(a).

41. New Jersey's special education statute similarly mandates that each school district

provide for the identification of any children ... residing in the district and enrolled in the public schools ... or in a nonpublic school located in the district, who cannot be properly accommodated through the school facilities usually provided, because of handicaps.

N.J.S.A. 18A:46-6.

42. IDEA also mandates that each eligible child with a disability "have in effect ... an individualized education program," 20 U.S.C. § 1414(d)(2)(A), which is a written statement of the child's level of educational performance, annual educational goals and educational services to be provided, 20 U.S.C. § 1414(d)(1)(A). See also 34 C.F.R. §§ 300.340-300.350; N.J.A.C.

6A:14-3.7.

43. New Jersey's special education regulations require that each school district and its employees be responsible for the "development and review of the individualized education program" and "placement" of children with disabilities. N.J.A.C. 6A:14-3.1(a).

44. Schools must provide interventions in the general education program to alleviate educational problems, such as those provided by the Pupil Resource Committee ("PRC"), Pupil Assistance Committee ("PAC") or Student Resource Committee ("SRC"), unless the child's educational problem requires direct referral to the Child Study Team ("CST") for the provision of special education services. N.J.A.C. 6A:14-3.3(a)(3)(i), -3.3(c).

45. The CST, alternately referred to as the IEP team, consists of a) the parents of the child; b) the child, where appropriate; c) at least one regular education teacher; d) at least one special education teacher, or if appropriate, at least one special education provider; e) a

representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the local educational agency; f) an individual who can interpret the instructional implications of evaluation results, who may already be a member of the team; and, f) other individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or agency. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.344.

46. Where the parent requests an evaluation to determine the child's eligibility for services, such a request must be considered a referral and must be forwarded without delay to the CST for consideration. N.J.A.C. 6A:14-3.3(d)2.

47. Once a child is referred for an initial evaluation to determine eligibility for special education services, a meeting of the CST, the parent and the child's teacher (or, if the child has no teacher, a teacher who is knowledgeable about the school district's programs), must be convened within twenty days -- excluding school holidays, but not excluding summer vacation - - to determine whether an evaluation is warranted and, if warranted, the nature and scope of the evaluation. N.J.A.C. 6A:14-3.3(e).

48. Within fifteen days of the meeting to determine whether an evaluation is warranted, the parent must be provided with written notice of the determination which includes an explanation of the reasons for the determination, notice of the procedural safeguards available to the parent under IDEA, and a request for the parent's consent to evaluate the child if an evaluation is found to be warranted. N.J.A.C. 6A:14-2.3(e), (f); 3.3 (e).

49. Pursuant to IDEA, the public agencies, including the State educational agency and the local educational agency, shall ensure that, within a reasonable period of time following

the agencies' receipt of parental consent to an initial evaluation of a child, the child is evaluated and, if determined eligible, special education and related services are made available to the child in accordance with an IEP. 34 C.F.R. § 300.343(b)(1). A meeting to develop an IEP for the child must be conducted within thirty days of a determination that the child needs special education and related services. 34 C.F.R. § 300.343(b)(2). The IEP must be implemented with "no delay." 34 C.F.R. § 300.301(c).

50. The New Jersey regulations set forth a time frame of ninety calendar days from the date the parent consents to the initial evaluation, for the school district to perform the evaluation, determine eligibility, and develop and implement an IEP. N.J.A.C. 6A:14-3.4(c). Within that ninety day time frame, the New Jersey regulations, like the federal regulations, establish a thirty day deadline, following a determination of eligibility for special education services, for holding a meeting to develop an IEP. N.J.A.C. 6A:14-3.7(a). Following that IEP meeting, an IEP must be implemented as soon as possible within the ninety day time frame commencing from the date of parental consent to evaluation . N.J.A.C. 6A:14-3.7(d).

51. Pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504") and its implementing regulations, 34 C.F.R. § 104 et seq., children who are not eligible for special education services under IDEA, but meet the definition of "handicapped person" under Section 504, must be provided with a free appropriate public education which may include the provision of special education and related services. See 34 C.F.R. §§ 104.31-104.39.

52. The State educational agency not only has primary responsibility to provide a publicly-supported education to all children, but with respect to the provision of special education services, the State educational agency is responsible for ensuring that a) the requirements of IDEA are met across the State; and b) all educational programs for children

with disabilities in the State, including all such programs administered by any other State or local agency are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities, and meet the educational standards of the State educational agency. 20 U.S.C. § 1412(a)(11)(A); Kruelle v. New Castle County Sch. Dist., 642 F.2d 687, 696 (3d Cir. 1981).

53. The DOE Commissioner is responsible for the general administration of special educational services in the public schools of New Jersey, and must continually review the operation of the required programs of special education. N.J.S.A. § 18A:46-2, N.J.S.A. § 18A:46-15(b).

54. IDEA mandates that each state, through its state educational agency, establish minimum state complaint procedures. 34 C.F.R. § 300.661.

55. New Jersey complaint procedures set forth that the Director of the DOE Office of Special Education Programs or his/her designee(s) “shall be responsible for reviewing, investigating and taking action” related to complaints. N.J.A.C. 6A:14-9.2(a).

56. Where pursuant to a complaint investigation the state educational agency finds a failure to provide appropriate services, the state educational agency must address:

- (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
- (2) Appropriate future provision of services for all children with disabilities.

34 C.F.R. § 300.660(b). See also N.J.A.C. 6A:14-9.2(e), (f).

57. The New Jersey Constitution provides that:

[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State....

N.J. Const. art. VIII, § 4, 1.

58. The Supreme Court of New Jersey has determined that:

the constitutional guarantee of a thorough and efficient education requires ‘equal educational opportunity’ for all children which must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his or her role as a citizen and as a competitor in the labor market.

Abbott v. Burke, 100 N.J. 269, 280-81 (1985)(“Abbott I”).

59. The Supreme Court has further defined a thorough and efficient education as

more than teaching the skills needed to compete in the labor market It means being able to fulfill one’s role as a citizen.... It means the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.

Abbott II, 119 at 363-64.

60. The Supreme Court has identified thirty poor urban districts, including Newark, as “Abbott districts” for their failure to provide a thorough and efficient education to their students. Abbott VII, 164 N.J. at 88-89 (defining an “Abbott district”).

61. In order to achieve a constitutional level of education for children from the Abbott districts, “the totality of the districts’ educational offering must contain elements over and above those found in the affluent suburban district.” Abbott II, 119 N.J. at 374.

62. The Supreme Court has also held that

students in the special needs districts have distinct and specific requirements for supplemental educational and educationally-related programs and services that are unique to those students, not required in wealthier districts, and that represent an educational cost not included within the amounts expended for regular education.

Abbott v. Burke, 136 N.J. 444, 453-54 (1994) (“Abbott III”).

63. Educational success “cannot be expected to be realized unless the Department and the Commissioner identify and implement the special supplemental programs and services that the children in these districts require.” Abbott III, 136 N.J. at 454.

64. In order to provide a thorough and efficient education in the Abbott districts, the Supreme Court ordered the State to a) remedy the educational disparity between the children of the Abbott districts and the children of the affluent districts; b) assure its educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts; and c) address the special disadvantages of the children in the Abbott districts. Abbott II, 119 N.J. at 385.

65. In devising appropriate remedies to ameliorate the deprivation of an adequate education in the special needs district, the Court directed the DOE Commissioner “to provide or secure the funding necessary to implement [supplemental] programs for which Abbott schools or districts make a request and are able to demonstrate a need.” Abbott v. Burke, 153 N.J. 480, 517 (1998) (“Abbott V”). The Supreme Court specifically recognized that “additional funds may be required to implement traditional special educational services.” Abbott V, 153 N.J. at 496.

66. The Supreme Court held that if a school demonstrates, based on assessment, the need for programs beyond those recommended by the DOE Commissioner, including special education programs, then the DOE Commissioner “shall approve such requests,” and when necessary, shall seek appropriations from the State “to ensure the funding and resources necessary for their implementation.” Abbott V, 153 N.J. at 518.

67. Sufficient funding must be available to ensure “‘exemplary programs and facilities’ for ‘special education.’” Abbott V, 153 N.J. at 518.

68. If the DOE Commissioner determines that a local school district has failed to assure a thorough and efficient system of education, the State Board of Education may issue an administrative order to remove the district board of education. N.J.S.A. 18A:7A- 34.

69. Effective immediately upon issuance of the administrative order, the local school district becomes a State-operated school district managed by a State district superintendent. N.J.S.A. § 18A:7A-34; N.J.S.A. § 18A:10-1.

70. A State-operated school district remains a corporate entity, despite the absence of the board of education, N.J.S.A. § 18A:7A-37, and the State-operated school may be sued under its corporate name. N.J.S.A. § 18A:7A-39(b).

71. 42 U.S.C. § 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

STATEMENT OF FACTS

1998 IDEA Complaint Investigation and DOE's Findings

72. On July 24, 1998, pursuant to 34 C.F.R. § 300.362 and N.J.A.C. 6A:14-9.2, the Education Law Center requested that Defendant DOE conduct a “complaint investigation” into Newark’s failure to a) identify and evaluate children with potential disabilities in both public and private schools; and b) conduct and complete special education evaluations in a timely manner pursuant to N.J.A.C. 6:28-2.1(c).

73. ELC filed the complaint investigation request on behalf of several named children and their parents, and on behalf of all other children with potential disabilities who had not yet been identified or evaluated.

74. In a Complaint Investigation Report dated December 28, 1998, signed by Defendant Gantwerk and transmitted by Defendant Zangrillo, DOE found that “the information contained in the [district’s] written procedures regarding the identification of potentially disabled public school pupils was not consistently available to the school-based personnel who work with these pupils on a daily basis.”

75. DOE also discovered that

all referrals for child study team evaluations, whether requested by parents or district personnel, were and continue to be routinely re-routed through the [pupil] assistance committee process without benefit of team review of the requests or the provision of notice to the parents informing them of their due process rights to disagree with the re-routing determination.

76. In addition, DOE identified “a central office procedure that establishes a further roadblock to the timely identification of potentially disabled pupils by requiring the approval of the assistant superintendent and the assistant director prior to a[] [pupil] assistance committee referral being sent to the diagnostic team to initiate the evaluation process.”

77. With regard to the timeliness of evaluations, DOE documented that Newark “failed to develop an efficient procedure to address the inordinately large number of incomplete, noncompliant initial cases.” In addition, the central office was found to be “unable to adequately monitor staffing patterns and needs; . . . unable to evaluate and monitor team productivity levels; and . . . unable to respond to concerns and complaints registered by both parents and school-based personnel, alike.”

78. DOE found that

[b]ecause of the lack of efficient procedures to identify staffing problems and case management needs, evaluation timelines are rarely, if ever, complied with. As a result, a significantly large number of cases is carried over into each school year and then quickly added to as new referrals begin to pile up with the commencement of the new school year.

79. DOE documented that “school-based staff routinely advise parents to obtain outside assessments to expedite the evaluation process”

80. DOE found that “the past and current procedures in place throughout the district prohibit school-based personnel from appropriately referring potentially disabled pupils to the child study teams for evaluations.” Additionally, DOE determined that when children are finally referred to the CST, “these referrals are rarely, if ever, completed in accordance with regulated time lines.”

81. DOE also concluded that, although the “district has written policies and procedures to identify and evaluate potentially educationally disabled pupils in the public schools within the district, no such procedures were submitted for the identification of potentially disabled pupils in the nonpublic sector.”

82. DOE’s investigation revealed that “not one school-based individual had any information regarding established procedures for obtaining evaluation and programming services for nonpublic school pupils in the district, nor could any individual identify a source that could provide such information.”

83. DOE concluded that Newark was engaged in “systemic noncompliance with the requirements established in N.J.A.C. 6:28 and N.J.A.C. 6A:14 regarding the identification and evaluation of potentially disabled pupils residing in the city of Newark,” and that “systemic corrective action is required.”

84. In accordance with its findings, DOE determined that Newark “must develop policies and procedures regarding the referral process at the school level.” Those procedures must allow a) parents, teachers, or other authorized personnel to directly refer a child to the CST; b) school personnel to appropriately identify those children who require a direct referral to the CST; c) PAC members to document the effects of PAC interventions and timely determine when a child requires a CST referral; and d) the district to utilize district personnel to comply with evaluation time lines, including, assignment of CST members to schools to enable them to comply with evaluation time lines, and the redeployment of CST members to address the changing evaluation staffing needs throughout the district.

85. DOE also determined that the district must identify specific staff members who will be responsible for developing the policies and procedures which the district develops and supervise school-based administrative compliance with the newly developed and existing policies and procedures who will be responsible for the assignment, redeployment, and supervision of CST members.

86. DOE established that the DOE central office is required to meet with Newark’s superintendent and other appropriate staff members to a) discuss the identified issues of noncompliance; b) identify specific individuals who will be responsible for developing and implementing the policies and procedures for identifying and evaluating children in a timely manner; and c) establish a calendar of meetings with DOE’s county office to ensure continued monitoring of the district’s progress toward systemic compliance. DOE must also provide technical assistance regarding regulatory requirements for assistance committees, referrals, and the evaluation and placement process to district central office administrators, school-based administrators, and CST members. In addition, DOE must meet with the district’s central office

staff and county office staff on a bi-weekly basis to monitor the district's compliance with the identified issues and revisit the district in six months to conduct a site-based monitoring to ensure the district's continued progress toward systemic compliance with the identified issues.

87. In a letter to ELC dated September 25, 1999, Defendant Gantwerk expressed its intention to provide the children named in the complaint investigation with "compensatory education" to compensate these children for the unlawful delay in their identification, evaluation, and receipt of special education services.

2000 DOE Report of Findings

88. On September 6, 2000, DOE issued a Report of Findings to Defendant Newark's Superintendent, based on a visit it conducted in the district from May 8, 2000 to May 15, 2000, to determine Newark's compliance with the requirements of IDEA and the state regulations.

89.. Once again, DOE found that Newark "must take action to ensure the prompt and effective correction of the identified areas of need."

90. According to DOE, Newark fails to "meet[] timelines throughout the special education process," partly due to Newark's "lack of staff and the ineffective deployment of staff." As a result, "this insufficiency continues to impact on the district's ability to adhere to requirement [sic] timelines."

91. DOE was unable to determine whether identification meetings were conducted within the required time lines. However, it found that "when students referred for a suspected disorder of articulation, voice or fluency presented with language issues, the student was not consistently referred to the child study team."

92. DOE ordered Newark to develop an "improvement plan" that will ensure that IEPs are implemented "as soon as possible" after the IEP meeting.

Ongoing Noncompliance in Newark

93. Despite the extensive findings and proposed corrective action in DOE's December 28, 1998 Complaint Investigation Report and September 6, 2000 Report of Findings, hundreds of children with disabilities in Newark continue to be deprived of an appropriate education.

94. None of the Defendants provided the children named in the 1998 Complaint Investigation, or any other similarly situated children, with compensatory education to

compensate these children for the unlawful delay in their identification, evaluation, and receipt of special education services.

95. The complaints of M.A. on behalf of E.S., M.A., A.T. on behalf of G.T., A.T., H.M. on behalf of M.M., H.M., G.L. on behalf of A.O., G.L., O.J. on behalf of O.D.J., O.J., A.E. on behalf of A.J.E., and A.E. are representative of the class of individuals who have similarly been denied such services.

E.S.

96. E.S., born on October 5, 1992, is an eight year old child who attended the third grade at First Avenue School, a public school in Defendant Newark's school district, during the 2000-01 school year.

97. E.S. entered Newark's public schools as a kindergarten student in September 1997.

98. During the 1998-99 school year, E.S. attended the first grade at Abington Avenue School in Newark. Toward the end of the school year, E.S. demonstrated academic difficulty resulting in unsatisfactory performance and failing grades.

99. For most of the 1999-00 school year, E.S. attended second grade at Abington Avenue. During the first quarter, E.S. received failing and below average grades. As soon as M.A., E.S.'s mother, received E.S.'s first quarter report card, she requested assistance from the Principal, Vice Principal, and Secretary of First Avenue School. She was instructed to request a special education evaluation. M.A. immediately requested that E.S. be promptly evaluated due to his academic difficulties and behavior problems in the classroom.

100. M.A. received a few phone calls from the school's guidance counselor advising that the school was looking into her request for E.S.'s evaluation.

101. On March 6, 2000, M.A. again requested assistance for E.S. from the school, this time from the Pupil Resource Committee. Specifically, M.A. requested that the PRC assist E.S. to focus on his school work.

102. In response to M.A.'s request, a PRC meeting was held and a plan was developed to provide E.S. with interventions in his regular education program. The approximately six weeks of interventions that E.S. received resulted in only minimal improvement in his academic performance.

103. Concerned about E.S.'s failure in school, M.A. transferred E.S. to First Avenue School where he completed the second grade.

104. For the 1999-00 school year, E.S. failed language and spelling, received a "D" in reading and mathematics, and received a "C" in social studies, science, and health/safety. As a result, E.S. attended Newark's summer school program. Despite the fact that E.S. did not improve academically, E.S. was promoted to the third grade.

105. During the 2000-01 school year, E.S. attended First Avenue School for the third grade. During the first quarter, E.S. failed or received a "D" in all major academic subjects. His personal development was reported to be unsatisfactory.

106. When M.A. inquired about her son's evaluation in the spring of 2000, a child study team member told M.A. that Newark did not have the staff necessary to address the needs of children who require special education services. In addition, the CST member informed M.A. that E.S. was the fifteenth child on the school's waiting list for a CST evaluation to determine eligibility for special education services.

107. Although a special education eligibility meeting was held on June 1, 2000, and it was determined that an evaluation was warranted, no evaluation was ever scheduled.

108. On November 30, 2001, M.A. visited E.S.'s school teacher to obtain his academic records. The teacher told M.A. that it was really a "waste of time" to send E.S. to school, because she could not provide him with the individual assistance he required.

109. M.A. inquired again in February 2001 about her son's evaluation and was informed that the waiting list for First Avenue School consisted of more than fifteen children ahead of E.S.

110. For the 2000-01 school year, E.S. failed reading, language, spelling and mathematics, received a "D" in social studies, science, health/safety and music, and received a "B" in art. E.S.'s personal development was found to be unsatisfactory. He was retained in the third grade.

111. To date, no meeting has been held to determine E.S.'s need for an evaluation or obtain M.A.'s consent to the evaluation, nor has M.A. been given any information about when such a meeting will be scheduled.

G.T.

112. G.T., born on May 19, 1992, is a nine-year old child who attended the third grade at Burnet Street School in Defendant Newark's school district during the 2000-01 school year. G.T. was diagnosed by a private physician, Isabel Carotenuto, M.D., Director of Child Development at the University of Medicine and Dentistry ("UMDNJ"), as having Attention Deficit Hyperactive Disorder ("ADHD").

113. G.T. also suffers from "Myasthenia Gravis" which is an abnormal condition of long term weakness of the muscles, especially in the face and throat. As a result of this neurological disorder, G.T. has "drooping upper eyelids," known as "Ptosis" which debilitates her eyes. She is on two medications which cause her to be alternately hyperactive and sleepy.

G.T., therefore, has difficulty staying awake in the classroom. A.T. constantly receives complaints about G.T. falling asleep in class. A.T. informed school personnel about G.T.'s disability and the side effects of the medication.

114. As a result of her disabilities, G.T. also refuses to do school assignments and does not pay attention in class. She has difficulty reading and problems with math. She continually fails major academic subjects. Despite her failure in school, Newark has failed to address her academic and behavior problems. G.T. has never received any assistance from the school.

115. A.T., the mother of G.T., originally requested a special education evaluation of G.T. in September 2000. Defendants failed to respond to A.T.'s request and G.T. has not been provided with any special education services to date.

116. A.T. again requested a special education evaluation at the beginning of February and in mid-February, however, Newark failed to respond.

117. On March 23, 2001, A.T. again requested a special education evaluation.

118. In response, Newark scheduled a meeting for March 28, 2001 to determine whether an evaluation was warranted. Unfortunately, nothing occurred. The Child Study Team merely rescheduled the meeting for April 11, 2001.

119. Regrettably, A.T. was undergoing surgery on April 11, 2001 and was unable to attend.

120. On April 26, 2001, Newark scheduled another meeting with the CST to determine again whether an evaluation was warranted. At the April 26th meeting, members of the CST informed A.T. that in order for the CST to determine whether an evaluation may be conducted, they needed the medical records from G.T.'s private physician. At the meeting, A.T. signed a release form for medical records. The CST did not make any further inquiries regarding its

obligation to determine whether G.T. should be evaluated. Rather, the CST merely scheduled another meeting.

121. On May 10, 2001, A.T. attended another meeting with the CST to determine G.T.'s need for an evaluation. One of the members of the CST was not in attendance, so nothing happened, except for scheduling another meeting.

122. The meeting was scheduled for May 17, 2001. Yet again, nothing happened at the meeting because G.T.'s teacher was not present. The CST merely decided to recommend G.T. to the Pupil Resource Committee ("PRC") to determine any intervention methods to assist her in the classroom. A.T. was told that in order to have G.T. evaluated, the PRC interventions must first be completed. A.T., of course, consented to this action, eager to obtain even the smallest amount of assistance for her child.

123. At yet another meeting on June 21st, A.T. was informed that G.T.'s teacher was recommending that G.T. repeat the third grade.

124. G.T. indeed failed the school year and will be retained in the third grade.

125. For the entire 2000-01 school year, A.T. has been waiting for Defendants to conduct a special education evaluation due to G.T.'s academic failure and her behavioral problems. Defendants have done nothing. After five scheduled meetings to determine whether an evaluation was warranted, Newark has yet to decide whether an evaluation is warranted, in spite of G.T.'s physical and learning disabilities, her academic failure, and behavior problems.

126. G.T. is not A.T.'s first child who has needed special education evaluation and services. Two of her older children also needed a special education evaluation and it was only after the intervention of attorneys that they were evaluated.

A.O.

127. A.O., born on November 1, 1991, is a nine year old child who attended a third grade bilingual class at Dr. E. Alma Flagg School (“Alma Flagg”) in Defendant Newark’s school district during the 2000-01 school year. A.O. is diagnosed as having Attention Deficit Disorder (“ADD”) and has been taking Ritalin since the age of seven.

128. Recognizing that A.O. had great educational difficulties, G.L., A.O.’s mother, repeatedly requested that Newark evaluate A.O. for special education services. Defendants have utterly failed in their responsibility to honor these requests.

129. Prior to entering Newark’s public schools in the Fall of 1996, A.O. attended pre-kindergarten at Deliverance Christian School, a private school in Newark. A.O. received unsatisfactory grades in several academic subjects and behavioral activities, but was passed to kindergarten.

130. During the 1996-97 school year and the beginning of the 1997-98 school year, A.O. attended kindergarten and then bilingual first grade at Miller Street School in Defendant Newark’s school district, despite his fluency in English and complete lack of fluency in Spanish. While at Miller Street School, A.O. performed poorly academically, receiving eleven grades of “needs improvement” in kindergarten. In addition, A.O.’s school teachers constantly complained to G.L. about A.O.’s behavior. School personnel advised G.L. to seek a special education evaluation and an outside evaluation.

131. Soon thereafter, A.O. was transferred to Louise A. Spencer School (“Spencer School”) and was again placed in a bilingual class for the first grade. A.O.’s teacher continued to complain to G.L. about A.O.’s behavior and academic performance.

132. Immediately after transferring A.O. to Spencer school, G.L. followed the advice of the Miller Street School personnel and requested that the child study team evaluate A.O.

133. On her own initiative, G.L. had A.O. evaluated by Brenda Harris, M.D., Director of the UMDNJ Children's Health Center on November 20, 1997. Dr. Harris found that A.O. had "significant deficits in skills and attention," and she diagnosed A.O. with having possible neuro-based learning disabilities and ADD. Dr. Harris recommended that A.O. be referred to the CST for special education services because "a [CST] evaluation [was] necessary to define the special education program [A.O.] [was] obviously in need [of]." Dr. Harris sent this assessment directly to the school's social worker.

134. By letter dated January 20, 1998, A.O.'s first grade teacher advised G.L. that she was referring A.O. to the Pupil Assistance Committee ("PAC") due to his "unsatisfactory performance in the areas of reading, writing, and mathematics, little or no participation in class activities, and limited attention span."

135. On February 9, 1998, the PAC referred A.O. for a special education evaluation because "the delays [were] so severe and [A.O. had been] previously identified as a potentially educational handicapped child." The PAC also referred A.O. to speech therapy and close monitoring by the teacher and teacher's aide.

136. In an apparent effort to evaluate A.O. for special education services, on February 9, 1998, the school's social worker referred A.O. for a comprehensive medical evaluation at the "Pediatric Continuity Clinic." G.L. consented to having the CST conduct this evaluation, and signed a second "Authorization for Release of Information" form allowing any pertinent information related to A.O.'s education to be released to the school. To G.L.'s knowledge, no such evaluation ever took place.

137. On February 18, 1998, G.L. again had A.O. privately evaluated. Richard Koenigsberger, M.D. of the Division of Pediatric Neurology at UMDNJ diagnosed A.O. with borderline microcephaly, mental delay, hyperactivity and ADD. Dr. Koenigsberger recommended that A.O. be placed in a monolingual classroom with a small pupil-teacher ratio, because A.O. was overwhelmed by two languages. He also recommended that A.O. receive assistance with speech and academic matters. Dr. Koenigsberger sent his report directly to the school.

138. On April 27, 1998, G.L. again consented to having A.O. evaluated by the school's CST. Again, the evaluation was not conducted.

140. For the 1997-98 school year, A.O. failed four major academic subjects. A.O.'s school teacher acknowledged A.O.'s willingness to complete class work, but found that he was unable to master basic skills. Despite his failing grades, A.O.'s academic progress report indicates he was passed to second grade due to the "new regulations of the District."

141. Because A.O. did not master the basic skills necessary to successfully commence the second grade, G.L. requested that A.O. be retained in first grade. The Spencer School principal granted this request.

142. It was not until October 18, 1998, eight months after the PAC recommended speech therapy, that one of Newark's speech-language evaluators conducted a speech-language evaluation of A.O. The evaluator determined that A.O. had unintelligible speech, severe expressive and receptive language delays, and a moderate articulation disorder, all with negative effects on his academic success. She found that A.O. had ADD, demonstrated auditory comprehension and processing delays, and appeared to have a central auditory processing disorder and visual impairments. She recommended that A.O. be placed in a monolingual

classroom, as English was his dominant language and the bilingual placement was causing him confusion. The evaluator recommended that A.O. receive speech therapy twice a week, individually or in a small group of no more than three.

143. Despite the speech-language evaluator's strong recommendations for services, it was not until almost two years later, on May 24, 2000, that A.O. was found eligible for bi-weekly speech-language services.

144. For the 1998-99 school year, A.O. repeated the first grade and again failed or received a "D" in all major academic subjects. Despite his failing grades, A.O. was passed to the second grade.

145. G.L. again requested a CST evaluation on June 29, 1999.

146. Also on June 29, 1999, G.L. again had A.O. evaluated privately by Vinod Goyal, M.D., Director of Developmental Medicine at the Children's Hospital at Newark Beth Israel Medical Center. Dr. Goyal found that A.O.'s "articulation problem continued and speech was quite unintelligible," "receptive and expressive language were at least a year and a half to 2 years below his age," and A.O.'s "general fund of knowledge was rather low and was only average for a 4-5 year old and was significantly low for a 7 year old." He found A.O.'s fine motor skills and perception to be that of a 5 year and 4 month old child. Academically, A.O. was at a kindergarten level. Dr. Goyal found that A.O. was not able to read, write, or spell and was only able to do very simple single digit addition and subtraction with assistance.

147. In summary, Dr. Goyal stated that "A.O. gets frustrated and upset when he is not able to complete a task assigned to him." The doctor found that "certainly behavior problems will develop as he experiences failure," and that A.O. has "relative microcephaly and has shown significant global developmental delays from early infancy, but has never been in any Special

Educational program.” Dr. Goyal found that A.O. had “significant delays in all areas and would require Special Education services as soon as possible before his self-esteem was damaged.” Dr. Goyal strongly recommended that a special education evaluation be conducted as soon as possible. Upon receipt of this assessment by Dr. Goyal, G.L. immediately provided the school with a copy.

148. Incredibly, despite the numerous professional recommendations against it, Defendants again placed A.O. in a bilingual class for second grade at Alma Flagg for the 1999-00 year.

149. On October 21, 1999, G.L. once again requested that the CST evaluate her son.

150. On November 3, 1999, the CST convened an identification meeting with G.L. to discuss A.O.’s referral for a special education evaluation. Once again, it was concluded that “an evaluation is warranted.” On this same day, G.L. signed yet another series of consent forms to conduct evaluations.

151. Nonetheless, yet another school year passed and A.O. was not evaluated.

152. For the 1999-00 school year, A.O. failed all major academic subjects, with the exception of English as a Second Language (“ESL”), in which he received a “D.” Overall, A.O.’s teacher emphasized his academic difficulties and the need to have him evaluated for special education services as soon as possible. A.O. was passed to the third grade.

153. On June 29, 2000, a CST member promised G.L. that an evaluation would take place promptly, and an appropriate program would be established in a school geared towards assisting A.O. to overcome his academic difficulties. This promise, too, was unfulfilled.

154. By letter dated August 24, 2000, G.L. expressed to the CST her frustrations regarding Defendants’ failure to evaluate A.O.

155. At the beginning of the 2000-01 school year, the CST advised G.L. to again re-submit for further review all documents relating to A.O.'s request for an evaluation. G.L. re-submitted all requested documents.

156. On October 11, 2000, G.L. received a "warning notice" from Alma Flagg advising that A.O. was failing English and Mathematics.

157. The CST did not contact G.L. until February 2001, and then only to request additional information for the evaluation process. G.L. promptly submitted the information requested.

158. It was not until May 23, 2001, that G.L. was contacted to meet with the CST. Unbeknownst to her, A.O. had finally been evaluated, and G.L. was provided with a copy of A.O.'s evaluations.

159. On January 25, 2001, A.O.'s psychological assessment was conducted. The psychologist found that A.O. shows "multiple deficits across his learning channels, with clear indication of a language-based disability, attention deficit and hyperactivity." She further found that "[h]is borderline level of intellectual functioning does not represent his assets for academic learning, which are much lower. He demonstrates a fragmented, scattered profile of general basic skills usually developed during early years." The psychologist recommended that A.O. be placed in "a highly structured setting suited to instruct and socialize youngsters afflicted by attention deficits."

160. On January 26, 2001, a Bilingual Learning Consultant ("BLC") conducted an educational assessment of A.O. The BLC found that A.O. "exhibits a significantly low profile of academic skills for a youngster his age[,] . . . severely delayed in basic areas of development, such as language, coordination, fine motor skills, as well as in his ability to focus and

concentrate on age appropriate activity or tasks.” The BLC determined that A.O. is a “non-reader, is unable to write, and his ability to deal with mathematical tasks, is highly and severely limited.” He further found that A.O. indicated limitations of importance, processing, recalling, and associating information.

161. At the May 23rd meeting, the CST classified A.O. as having a “specific learning disability,” yet failed to provide him with any special education services.

162. The CST developed an IEP for the 2001-02 school year which proposes to place A.O. in a special education class.

163. Given the four years during which Defendants failed to address A.O.’s educational needs, G.L. remains extremely skeptical of whether or not Defendants will provide her son with the necessary services in the 2001-2002 school year.

164. Defendants have never discussed their obligation to provide A.O. with “compensatory education” for the years they deprived him of special education services.

M.M.

165. M.M., born on September 26, 1992, is an eight year old child who attended the third grade at Wilson Avenue School (“Wilson Avenue”) in Defendant Newark’s school district during the 2000-01 academic year. M.M. is diagnosed with ADHD and takes Ritalin daily.

166. Prior to entering Newark’s public schools in March of 1999, M.M. spent two years in preschool, one year in kindergarten, and most of his first grade year at the Academy of St. Benedict, a private school in Newark. Throughout much of 1997-98 and 1998-99, M.M.’s kindergarten and first grade years, M.M.’s mother, H.M., received numerous complaints from M.M.’s teachers and the St. Benedict principal about M.M.’s behavior in the classroom.

Eventually, the principal at St. Benedict told H.M. that the school could not handle M.M. and could not provide him with the special education services he required.

167. Because St. Benedict could not provide M.M. the services he required, H.M. had no choice but to transfer M.M. to public school in Newark's school district.

168. In March of 1999, H.M. registered M.M. at Wilson Avenue School and requested a special education evaluation for M.M. H.M. was informed that it was too late in the school year to begin the evaluation process.

169. Since Defendants refused to evaluate M.M., on March 26, 1999, H.M., on her own initiative, had M.M. evaluated by Vinod Goyal, M.D., Director of Developmental Medicine at the Children's Hospital at Newark Beth Israel Medical Center. Dr. Goyal found that M.M. evidenced impulsive behavior, neurological immaturity, short attention span, and easy distractibility. Dr. Goyal was concerned that M.M.'s ability to read, write, and spell was, at best, at the beginning stages of first grade, although M.M. was completing first grade.

170. On April 27, 1999, after a follow-up visit, Dr. Goyal found that M.M. had significant problems paying attention. He was hyperactive and showed impulsive behavior. Dr. Goyal assessed M.M. as having ADHD and prescribed Ritalin. Dr. Goyal recommended that M.M. be placed in a small classroom setting and be provided with a structured summer reading program.

171. At the beginning of the 1999-00 school year, H.M. again requested that Newark conduct a special education evaluation.

172. In response, on December 7, 1999, Newark scheduled a meeting with the School Resource Committee to develop and implement activities to improve M.M.'s behavior in the

classroom. Newark only suggested intervention strategies and did not conduct a special education evaluation.

173. Since Newark failed to evaluate M.M. upon H.M.'s request, H.M. requested Section 504 services in order to ensure individual assistance was provided to M.M. Shortly thereafter, H.M. ran into a CST member in the school hallway who informed her that the request for Section 504 services had been denied due to lack of funding. H.M. was soon after shown her request for Section 504 services with the word "denied" penciled on the letter. She received no formal notification of this decision.

174. Finally, on January 5, 2000, M.M. was evaluated solely to determine his eligibility for speech-language services by one of Newark's speech therapists, who found that his articulation errors warranted speech therapy once a week for a half an hour. On February 29, 2000, the speech therapist developed M.M.'s IEP for speech-language services, effective from March 6, 2000 until March 5, 2001. M.M. was still not evaluated for the numerous other special education services he required.

175. On February 29, 2000, the Wilson Avenue PAC developed specific intervention strategies to address M.M.'s academic difficulties, in particular his lack of progress in reading. However, M.M.'s academic performance and behavior did not improve with these interventions.

176. On June 5, 2000, H.M. was notified that M.M. was identified as "potentially educationally disabled" and she immediately consented to the CST determining the need for a comprehensive evaluation.

178. On or about July 2000, a CST member advised H.M. that M.M. would be evaluated for special education services during the summer. H.M. made numerous attempts to contact the Supervisor of the Special Education Department to ensure that the evaluation would

take place. H.M. was told that the Supervisor was unable to find the papers H.M. had signed consenting to a determination of M.M.'s need for a special education evaluation. When the Supervisor finally found the papers, the Supervisor informed H.M. that M.M. would be evaluated in September of 2000.

179. On September 28, 2000, a CST meeting was convened to inform H.M. that M.M. would be evaluated because of his "continued difficulties in the classroom despite [PAC] interventions." In acknowledging that M.M. had been diagnosed as having ADHD and taking Ritalin, the CST found that educational, psychological, speech/language, and neuropsychiatric assessments were needed because "[M.M.]'s behavior is impeding his academic performance.... In class, he is very active, impulsive and easily distracted." At the meeting, H.M. again consented to her son's evaluation and to the CST's proposed evaluation plan.

180. By letter dated October 3, 2000, one of Newark's Speech-Language Specialists notified H.M. that M.M. would be evaluated within ninety days.

181. By December 6, 2000, Newark finally completed an educational, psychological, and speech and language assessment of M.M. Newark, however, failed to conduct a neuropsychiatric assessment despite its finding that such an assessment was necessary.

182. It was not until February 9, 2001, that a combined eligibility/IEP meeting was convened, absent the mandated presence of the special education teacher, to inform H.M. that M.M. was in fact eligible for special education and related services under the category of "other health impaired." An IEP was drafted where it was recommended that M.M. be mainstreamed, placed in a resource room two periods per day from September 2001 to February 2002, and provided with speech services once a week. At the meeting, H.M. was informed that, because the resource rooms were presently filled, M.M. would not be placed in a resource room until

September 2001. No explanation was given for why no other services would be provided until September 2001.

183. H.M. requested, by letter dated April 5, 2001, that M.M. be immediately placed in a resource room. The CST stated that to place M.M. in a resource room during the present school year, he would have to be transferred to another school. Alternatively, M.M. would remain in his current setting until the following year. H.M. decided that it was in M.M.'s best interest to remain in his current placement for the completion of the school year.

184. Throughout the school year, M.M. received "Ds" and "Cs" in all major academic subjects.

185. In May, 2001, in an effort to assist her son, H.M. had M.M. evaluated, at her own expense, by the Huntington Learning Center ("HLC") so that HLC could provide H.M. with the services which Newark refused to provide him.

186. M.M. has received educational services from HLC since June 2001 for which H.M. was required to take out a loan and pay approximately \$9,000.

187. Although Newark finally evaluated M.M. after two years of H.M.'s repeated requests, Newark conducted an incomplete evaluation. Moreover, Defendants have yet to provide M.M. with special education and related services, and Defendants have not mentioned their obligation to provide M.M. with "compensatory education."

O.D.J.

188. O.D.J. is a nine year old child attending the fourth grade at Eighteenth Avenue School, a public school in Defendant Newark's school district. After two years of requests by O.D.J.'s father and teacher for a special education evaluation for O.D.J., and after intervention by lawyers on his behalf, Newark finally classified O.D.J. as having a learning disability, found he also required speech services and placed him in a special education class. Newark, however, never provided O.D.J. with "compensatory education" for the time during which they deprived him of an appropriate education.

189. During his first year in kindergarten at Hawkins Street School, a public school in Defendant Newark's school district, the school's PAC identified O.D.J. for a special education evaluation due to his significant delays and difficulty learning. O.D.J. was officially referred to the CST by the PAC in February 1997.

190. O.D.J. was retained in kindergarten in June 1997 and continued to perform poorly in kindergarten during the 1997-98 school year, while both O.D.J.'s father and teacher made repeated requests for a special education evaluation.

191. One year after O.D.J.'s referral to the CST by the PAC, and following intervention by an attorney, Newark began evaluating O.D.J. in February 1998. O.D.J. was determined eligible for special education on June 11, 1998 and his initial IEP was developed on June 15, 1998. He was classified neurologically impaired and was placed in a self-contained classroom in September 1998 at Eighteenth Avenue School. On August 5, 1998, at the age of seven, O.D.J. was evaluated for speech language services and was found to have significant developmental delays, below three years of age, in the acquisition of receptive and expressive

skills. The speech language specialist recommended that O.D.J. receive speech therapy twice a week.

192. On October 6, 2000, O.D.J.'s IEP for the 2000-01 school year was drafted, indicating that O.D.J. is three years below grade level and continuing O.D.J.'s placement in a special education class with speech therapy twice a week for the year.

193. O.D.J. remains eligible for special education services.

194. Defendants failed to provide O.D.J. with "compensatory education" for failing to find, identify, and evaluate him, determine his eligibility, and develop and implement his IEP.

A.J.E.

195. A.J.E., born on October 1, 1991, is a nine year old child who attended the third grade at Clinton Avenue School in Defendant Newark's School District during the 2000-01 school year. After two years of A.J.E.'s mother requesting that A.J.E. be evaluated, and after the intervention of lawyers on his behalf, Newark finally evaluated A.J.E. in April of 1998. A.J.E. was classified as neurologically impaired and placed in a self-contained classroom. Defendants, however, have never provided A.J.E. with "compensatory education" for the time during which they failed to provide him with special education services.

196. Shortly before A.J.E. began kindergarten at a private school, A.J.E.'s mother sought a private evaluation of A.J.E. According to this evaluation, dated August 21, 1996 and conducted when A.J.E. was four years and ten months old, A.J.E. was in need of speech-language therapy. A.J.E.'s mother provided a copy of the evaluation to the director of the private school and requested speech-language therapy for A.J.E. The private school director told A.J.E.'s mother that private schools do not provide such services.

197. In order to obtain the necessary special education services, A.J.E.'s mother enrolled A.J.E. at Clinton Avenue School in Defendant Newark's school district in September 1997. A.J.E.'s mother provided the CST with a copy of her son's evaluations and requested numerous times to have her son evaluated. A.J.E.'s mother was told that the CST had a waiting list for evaluations.

198. Through his mother's initiative, A.J.E. was again evaluated privately in December 1997 by the Children's Hospital Assessment and Treatment Team ("CHATT") at Newark Beth Israel Medical Center. The CHATT found that A.J.E. presented a "severe communication disorder" and recommended a full special education evaluation. A.J.E.'s mother presented this report to Newark's CST and again requested a special education evaluation. The CST failed once again to evaluate A.J.E.

199. Frustrated by the repeated delays, A.J.E.'s mother retained an attorney on March 10, 1998. Subsequent to the attorney's intervention, Newark evaluated A.J.E. and held an eligibility conference on April 30, 1998. Newark drafted an IEP, classified A.J.E. as neurologically impaired, and recommended him for placement in a self-contained special education classroom with speech-language services. However, Newark did not immediately implement A.J.E.'s IEP, claiming that it could not be implemented at the Clinton Avenue School. A.J.E.'s mother was therefore forced to defer implementation of A.J.E.'s IEP until September 1998 since Newark told her it was also too late in the school year to have A.J.E. transferred to another school.

200. Newark finally implemented A.J.E.'s IEP during the 1998-1999 school year.

201. A.J.E. remains eligible for special education and related services. His most recent IEP, developed on April 11, 2000, provides for A.J.E.'s continued placement in a self-contained classroom with speech-language services.

202. From 1996 to 1998, Defendants failed to find, identify, and evaluate A.J.E.; failed to determine his eligibility for special education services; and failed to develop and implement an IEP. To date, Defendants have failed to provide A.J.E. with any "compensatory education" for the two years during which they failed to provide him with the services he needed.

The Plaintiff Class

203. Defendants have failed and continue to fail timely to find, identify and refer eligible and potentially eligible children with disabilities for special education services.

204. Defendants have failed and continue to fail timely to evaluate eligible and potentially eligible children with disabilities for special education services.

205. Defendants have failed and continue to fail to make timely special education eligibility determinations for eligible children with disabilities.

206. Defendants have failed and continue to fail timely to develop IEPs for eligible children with disabilities.

207. Defendants have failed and continue to fail timely to implement IEPs for eligible children with disabilities.

208. Defendants have failed and continue to fail to compensate eligible children with disabilities for their failure to locate, identify, refer, evaluate, and determine their eligibility for special education services, and develop and implement their IEPs in a timely manner.

209. Defendants DOE, Gagliardi, Gantwerk and Zangrillo have failed and continue to fail to provide the relief required in response to a 1998 IDEA complaint investigation request.

210. Defendants DOE, Gagliardi, Gantwerk and Zangrillo have failed and continue to fail to monitor appropriately Defendant Newark's implementation of special education laws.

211. There has been and continues to be an insufficient number and inadequate deployment of CST staff throughout Newark's public school district.

212. Defendants engaged and continue to engage in the practice of referring children to the PAC, PRC or SRC when parents request a special education evaluation, rather than scheduling a meeting to determine whether an evaluation is warranted.

213. Defendants engaged and continue to engage in the practice of advising parents to obtain private special education evaluations of their children, rather than evaluate them as mandated by IDEA.

214. Defendants engaged and continue to engage in the practice of placing children on waiting lists for special education evaluations.

215. There are waiting lists for evaluations consisting of at least thirty children at Hawkins Street School, more than fifteen children each at First Avenue and Burnett Schools, and similar numbers at many other Newark schools.

CLAIMS

First Cause of Action

216. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

217. Defendants' failure to identify, locate, and refer eligible and potentially eligible children with disabilities for special education services violates IDEA, 20 U.S.C. §1412(a)(3); 34

C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a); N.J.A.C. 6A:14-3.1(a), -3.3, and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Second Cause of Action

218. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

219. Defendants' failure to evaluate eligible or potentially eligible children with disabilities violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a), and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Third Cause of Action

220. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

221. Defendants' failure to make eligibility determinations for eligible children with disabilities violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a), and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Fourth Cause of Action

222. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

223. Defendants' failure to develop IEPs for eligible children with disabilities violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a) and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Fifth Cause of Action

224. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

225. Defendants' failure to implement IEPs for eligible children with disabilities violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a), and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Sixth Cause of Action

226. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

227. Defendants' failure to provide eligible children with disabilities with "compensatory education" to compensate for their failure to identify, locate, refer and evaluate them, determine their eligibility, and develop and implement their IEPs violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a), -3.3, and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Seventh Cause of Action

228. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

229. The failure of Defendants DOE, Gagliardi, Gantwerk, and Zangrillo to appropriately monitor and enforce Defendant Newark's obligation to identify, locate, refer, and evaluate, find eligible and develop, and implement an IEP for children who require or may

require special education services violates IDEA, 20 U.S.C. §1412(a)(3); 34 C.F.R. § 300.125; N.J.A.C. 6A:14-3.1(a), 3.3, and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq.

Eighth Cause of Action

230. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

231. The failure of Defendants DOE, Gagliardi, Gantwerk, and Zangrillo to appropriately remediate Defendant Newark's denial of special education services to eligible children, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the Plaintiff class and appropriate future provision of services for all children with disabilities, violates IDEA, 34 C.F.R. § 300.660(b), and New Jersey's special education statute, N.J.S.A. § 18A:46-1 et seq. See also N.J.A.C. 6A:14-9.2(e)-(j).

Ninth Cause of Action

232. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

233. At all relevant times herein, Defendants, acting under color of state law, engaged and continue to engage in a policy and practice of a) failing to identify, locate, and refer eligible and potentially eligible children with disabilities; b) failing to evaluate eligible and potentially eligible children with disabilities; c) failing to make eligibility determinations for eligible children with disabilities; d) failing to develop IEPs for eligible children with disabilities; e) failing to implement IEPs for eligible children with disabilities; f) referring children to the PAC,

PRC or SRC when parents request a special education evaluation rather than scheduling a meeting to determine whether such an evaluation is warranted; g) advising parents to obtain special education evaluations from private professionals, rather than evaluating them; h) placing children on waiting lists for special education evaluations; i) failing to provide compensatory education to those children who were untimely identified and evaluated; and j) failing to employ an adequate number of CST staff throughout the Newark district.

234. In adopting and implementing these policies and practices, Defendants, acting under color of state law, deprive Plaintiffs of their rights under IDEA, in violation of 42 U.S.C. § 1983.

Tenth Cause of Action

235. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

236. At all relevant times herein, Defendants DOE, Gagliardi, Gantwerk and Zangrillo, acting under color of state law, engaged and continue to engage in the policy and practice of a) failing appropriately to monitor and enforce Defendant Newark's identification and evaluation of children who require or may require special education services and Defendant Newark's provision of special education services to children determined eligible for such services; and b) failing appropriately to remediate the denial of special education services, including as appropriate, the awarding of corrective action appropriate to the needs of the Plaintiff class and appropriate future provision of services for all children with disabilities.

237. In adopting and implementing these policies and practices, Defendants Gagliardi, Gantwerk and Zangrillo, acting under color of state law, deprive Plaintiffs of their rights under IDEA, in violation of 42 U.S.C. § 1983.

Eleventh Cause of Action

238. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

239. Defendant Newark's failure to assess Plaintiffs' needs for special education services, determine the need for supplemental funding for such services and, if needed, request adequate funding from the State for such services, violates Plaintiffs' right to a "thorough and efficient education" under the New Jersey Constitution, N.J. Const. art. VIII, § 4, 1, and the *Abbott v. Burke* mandates, and violates Plaintiffs' right to a free appropriate public education under IDEA, 20 U.S.C. § 1400 et seq.

Twelfth Cause of Action

240. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs "1" through "215" of the Complaint with the same force and effect as though each were fully set forth at length herein.

241. The failure of Defendants DOE and Gagliardi to identify and implement the special education services that Plaintiffs require, and the failure of Defendants DOE and Gagliardi to provide or secure the funding necessary to provide such services, violates Plaintiffs' right to a "thorough and efficient education" under the New Jersey Constitution, N.J. Const. art. VIII, § 4, 1, and the *Abbott v. Burke* mandates, and violates Plaintiffs' right to a free appropriate public education under IDEA, 20 U.S.C. § 1400 et seq.

RELIEF REQUESTED

WHEREFORE Plaintiffs, individually and on behalf of the Plaintiff class, request the following relief:

- A. an order certifying this lawsuit as a Plaintiff class action;
- B. a judgment pursuant to 28 U.S.C. § 2201 declaring that Defendants have violated Plaintiffs' rights, as set forth above;
- C. the entry of a permanent injunction ordering Defendants to perform the following for Plaintiff class: (1) timely identify, locate and refer; (2) timely evaluate; (3) timely determine eligibility for special education and related services; (4) timely develop IEPs; (5) timely implement IEPs; (6) timely provide special education services; and (7) establish a tight time frame for the identification, location, referral, evaluation, eligibility determination and provision of special education services to all children who have been denied such services;
- D. an award of compensatory education for all class members;
- E. an award of compensatory damages for the named plaintiffs;
- F. an order appointing a special master to oversee the evaluations of, the development and implementation of IEPs for, and the awarding of compensatory education to all Plaintiffs;
- G. an order compelling Defendant Newark to assess Plaintiffs' needs for special education services, determine the need for supplemental funding for such services and, if needed, request adequate funding from the State for such services;

- H. an order compelling Defendants DOE and Gagliardi to identify and implement the special education services that Plaintiffs require, and to provide or secure the funding necessary to provide such services;
- I. an order requiring reimbursement of such special education-related expenses incurred by Plaintiffs as expenses for independent evaluations and for tutoring services;
- J. an award of costs and attorneys' fees pursuant to 20 U.S.C. §1415(i)(2) and 42 U.S.C. § 1988; and
- K. such other relief as this Court deems appropriate.

Respectfully submitted,

GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE
A Professional Corporation

By:

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EDUCATION LAW CENTER
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Dated: July ___, 2001

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

Lawrence S. Lustberg (LL1644)

