

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LV, VSG, RC, AD, NA, AD, YG, and LO,

Plaintiffs,

vs.

NEW YORK CITY DEPARTMENT OF
EDUCATION; NEW YORK CITY BOARD OF
EDUCATION; JOEL KLEIN, in his individual and
official capacity as Chancellor of the New York City
School District,

Defendants.

Civ. No.:

COMPLAINT

PRELIMINARY STATEMENT

1. This action seeks to enforce Defendants' compliance with final decisions and orders of Impartial Hearing Officers ("Impartial Hearing Orders") entered pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1415, et. seq.

Defendants' failure to comply with these Impartial Hearing Orders is in violation of Plaintiffs' rights under the due process clause of the 14th Amendment of the U.S.

Constitution; the IDEA; 42 U.S.C. § 1983; and Section 200.5 of the Regulations of the New York State Commissioner of Education, 8 N.Y.C.R.R. § 200.5.

2. Plaintiffs also seek a declaratory judgment that Defendants' failure to comply with the Impartial Hearing Orders is in violation of the due process clause of the 14th Amendment to the U.S. Constitution; the IDEA; 42 U.S.C. § 1983; and Section 200.5 of the Regulations of the New York State Commissioner of Education, 8 N.Y.C.R.R. § 200.5.

3. The acts and omissions complained of herein are indicative of the system-wide failure of Defendants' to establish a policy and procedure for the timely and effective enforcement of Impartial Hearing Orders.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 1331, in that claims are asserted under the laws of the United States; under 28 U.S.C. § 1343(a), in that claims are asserted under laws providing for the protection of civil rights; and under 42 U.S.C. § 1983. This Court has jurisdiction over Plaintiffs' pendent state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. § 2201 and 2202.

5. Venue is proper under 28 U.S.C. § 1391(b).

6. If successful, Plaintiffs are entitled to costs and attorneys fees under 42 U.S.C. § 1988 and 20 U.S.C. §1415.

PARTIES

7. Plaintiff LV is the mother of RV, a child with a disability who resides in New York City.

8. Plaintiff VSG is the mother of KSG, a child with a disability who resides in New York City.

9. Plaintiff RC is the mother of TC, a child with a disability who resides in New York City.

10. Plaintiff AD is the mother of TD, a child with a disability who resides in New York City.

11. Plaintiff NA is the mother of SA, a child with a disability who resides in New York City.

12. Plaintiff AD is the mother of JD, a child with a disability who resides in New York City.

13. Plaintiff YG is the mother of SG, a child with a disability who resides in New York City.

14. Plaintiff LO is the mother of HG, a child with a disability who resides in New York City.

15. Initials are used throughout this Complaint to preserve the confidentiality of the infant plaintiff in conformity with the privacy provisions of the IDEA, 20 U.S.C. §1417(c), and the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. §1232g.

16. Defendant THE NEW YORK CITY BOARD OF EDUCATION (“the Board of Education” or “the Board”) was or continues to be the official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the City of New York, including programs and services for students with disabilities. N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). It is a recipient of federal financial assistance.

17. Defendant THE NEW YORK CITY DEPARTMENT OF EDUCATION (“Department”) is the newly formed official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the City of New York, including programs and services for students with disabilities.

N.Y. Educ. Law §§ 2590, 2590-g (McKinney 1980). It is a recipient of federal financial assistance.

18. Defendant JOEL KLEIN is the Chancellor of the New York City School District (“the Chancellor”) and as such is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-h (McKinney 1930), including the power and duty to control and operate all academic and vocational senior high schools in the city school district.

FACTUAL ALLEGATIONS

19. Plaintiff LV is the mother of RV, a 16-year-old student classified as emotionally disturbed. RV was born on February 16, 1987.

20. LV initiated a hearing to request prospective funding for summer school tuition for RV at the Robert Louis Stevenson High School (“Stevenson School”), a non-public program that has not been approved by the New York State Education Department to provide education to students with disabilities. A hearing was held on July 24, 2003.

21. By decision dated August 11, 2003, the Impartial Hearing Officer ordered that LV receive \$2,800 for summer school tuition from the Department that she would in turn endorse to the Stevenson School.

22. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of September 11, 2003.

23. As of the filing of this complaint, Defendants have not provided RV with the \$2,800 for RV's attendance at the Stevenson School summer program as required by the Impartial Hearing Order.

24. Plaintiff VSG is the mother of KSG, a 15-year-old student with Traumatic Brain Injury and Attention Deficit Disorder. KSG was born on May 4, 1988.

25. On April 30, 2003, VSG requested an impartial hearing alleging that the placement offered to KSG by Defendants was inappropriate. At the June 16, 2003 hearing, VSG requested that Defendants fund KSG's attendance at the 2003 summer program at the Stevenson School. A hearing was held on June 16, 2003.

26. By decision dated July 10, 2003, the Impartial Hearing Officer ordered, *inter alia*, that the Department fund KSG's attendance at the Stevenson School summer program.

27. Defendants did not appeal the Hearing Officer's decision within 30 days, and the decision became final as of August 10, 2003.

28. As of the filing of this complaint, Defendants have still not provided VSG funding in the amount of \$3,400 for KSG's attendance at the Stevenson School summer program as required by the Impartial Hearing Order.

29. Plaintiff RC is the mother of TC, a 15-year-old student who had exhibited behavioral and academic problems in school and was suspected of having a disability. TC was born on August 1, 1988.

30. RC initiated a hearing and hearings were held on January 16, 17, and 27, 2003.

31. By decision dated February 19, 2003 and corrected February 25, 2003, the Impartial Hearing Officer ordered, *inter alia*, Defendants to reimburse RC the amount of \$200 for a uniform that she purchased for TC to attend The Young Women's Leadership School.

32. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of March 28, 2003.

33. As of the filing of this complaint, Defendants have still not provided RC with the \$200 as required by the Impartial Hearing Order.

34. Plaintiff AD is the mother of TD, a 17-year-old student who is classified as emotionally disturbed. TD was born on April 17, 1986.

35. AD initiated hearings, which were held on October 11, 2002 and November 25, 2002, to request, *inter alia*, payment for tuition for a period of time that TD attended the Stevenson School.

36. By decision dated March 3, 2003, the Impartial Hearing Officer ordered the Department to pay tuition for the period of time that TD spent in the Stevenson School during the 2002-2003 school year.

37. TD attended the Stevenson School from mid-December 2002 to mid-February 2003. The amount of tuition for this period amounts to \$6,000.

38. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of April 3, 2003.

39. As of the filing of this complaint, Defendants have not paid tuition in the amount of \$6,000 for the period of time that TD attended the Stevenson School as required by the Impartial Hearing Order.

40. Plaintiff NA is the mother of SA, a 15-year-old student who is classified as emotionally disturbed. SA was born on September 2, 1988.

41. NA initiated a hearing to request, *inter alia*, reimbursement for a private psycho-educational evaluation performed by Dr. June Rousso on February 28, 2003. The hearing was held on May 30, 2003.

42. By decision dated July 11, 2003, the Impartial Hearing Officer ordered, *inter alia*, that NA receive reimbursement for the private psycho-educational evaluation.

43. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of August 10, 2003.

44. As of the filing of this complaint, Defendants have not provided payment for the private psycho-educational evaluation in the amount of \$400 as required by the Impartial Hearing Order.

45. Plaintiff AD is the mother of JD, a 12-year-old student who was classified as speech-impaired in his IEP dated March 15, 2001, the most current at the time of AD's request for a hearing. JD was born on September 2, 1991.

46. AD requested a hearing seeking, *inter alia*, payment from the Board for JD's round trip transportation to a private school and reimbursement for transportation expenses paid to date. A hearing was held on April 26, 2002.

47. By decision dated May 24, 2002, the Impartial Hearing Officer ordered, *inter alia*, the Board to reimburse AD for transportation costs they had incurred during the 2001-2002 school year.

48. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of June 24, 2002.

49. As of the filing of this complaint, Defendants have not reimbursed AD for transportation costs incurred by the parents in the amount of \$1,590 as required by the Impartial Hearing Order.

50. Plaintiff YG is the mother of SG, a 17-year-old student classified as learning disabled and emotionally disturbed. SG was born on August 12, 1986.

51. YG initiated a hearing requesting, *inter alia*, reimbursement to Columbia Presbyterian for psychiatric, neuropsychological and neurological examinations. Hearings were conducted on November 5, 2003, November 26, 2003, January 22, 2003, February 28, 2003 and March 14, 2003.

52. By decision dated March 14, 2003, the Impartial Hearing Officer ordered, *inter alia*, the Department to reimburse Columbia Presbyterian for psychiatric, neuropsychological and neurological examinations for a total cost not to exceed \$3600.00.

53. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of April 14, 2003.

54. As of the filing of this complaint, Defendants have not paid Columbia Presbyterian for the psychiatric, neuropsychological and neurological examinations, the cost of which amounted to \$2,000, as required by the Impartial Hearing Order.

55. Plaintiff LO is the mother of HG, an 18-year-old student classified as learning disabled. HG was born on July 7, 1985.

56. LO initiated a hearing requesting, *inter alia*, an independent psychological evaluation at the Department's expense. A hearing was conducted on April 16, 2003.

57. By decision dated April 24, 2003, the Impartial Hearing Officer ordered, *inter alia*, that HG receive the psychological evaluation at the Department's expense.

58. Defendants did not appeal the Impartial Hearing Officer's decision within 30 days, and the decision became final as of May 23, 2003.

59. As of the filing of this complaint, Defendants have not rendered payment for the psychological evaluation of HG, the cost of which amounted to \$400, as required by the Impartial Hearing Order.

60. All the actions and failures to act of Defendants alleged above were made under color of state law.

FURTHER FACTUAL ALLEGATIONS

61. On October 10, 2003, Plaintiffs' counsel informed Defendants' General Counsel and Office of Legal Services that Plaintiffs' counsel were preparing to file an action based on Defendants' systematic failure to enforce Impartial Hearing Orders, and provided to them a list of the named Plaintiffs and the names of their children. Plaintiffs' counsel requested immediate resolution and enforcement of the Impartial Hearing Orders.

62. On or about October 14, 2003, Plaintiffs' counsel again provided to the Department's General Counsel and Office of Legal Services a list of the names, dates of birth and case numbers of the named Plaintiffs' children.

63. As of the date of this Complaint, nearly two months after Defendants were provided with this information, the Impartial Hearing Orders at issue herein remain unenforced in clear violation of law.

64. Plainly, Defendants' failure to comply with Impartial Hearing Orders is a systemic problem that demonstrates a clear indifference to the rights of Plaintiffs.

65. Defendants clearly lack an effective policy for the timely and efficient enforcement of Impartial Hearing Orders, resulting in the Defendants' widespread failure to comply with the Impartial Hearing Orders and a clear deprivation of Plaintiffs' rights.

CAUSES OF ACTION

66. Defendants have violated the Plaintiffs' rights under the due process clause of the 14th Amendment to the Constitution of the United States.

67. Defendants' failure to provide Plaintiffs with the relief ordered by the Impartial Hearing Officers deprived Plaintiffs of their right to a free appropriate public education under IDEA, 20 U.S.C. § 1400(c) and due process under IDEA, 20 U.S.C. § 1415, and thus deprives them of rights secured by federal law in violation of 42 U.S.C. § 1983.

68. Having won favorable Impartial Hearing Orders, Plaintiffs have no further administrative remedy, and thus exhaustion is futile and not required.

RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a. Assume jurisdiction of this case;
- b. Enter a judgment:
 - i. Ordering Defendants to comply immediately with the provisions of the Impartial Hearing Orders at issue herein;

- ii. Retaining jurisdiction of this action for all purposes, including entry of such additional orders as may be necessary or proper;
 - iii. Requiring Defendants to design, submit to Plaintiffs' counsel and the Court for approval, and implement an effective plan to ensure that all Impartial Hearing Orders are enforced in a timely and comprehensive manner.
- b. Issue a declaratory judgment that Defendants have violated Plaintiffs' rights as set forth;
 - c. Award to Plaintiffs their costs and attorneys fees; and
 - d. Grant such other and further relief as may be appropriate.

Dated: December 12, 2003
New York, New York

Respectfully submitted,

Elisa F. Hyman (EFH4709)
Sonal Y. Patel (SP3101)
Attorneys for Plaintiffs
Advocates for Children of New York
151 W. 30th Street, 5th Floor
New York, New York 10001
(212) 947-9779