

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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J.L. on behalf of J.P., H.B., on behalf of M.C., and :

K.M. and D.A. on behalf of O.A., :

:

Plaintiffs, :

:

-against- :

:

New York City Department of Education and :

CARMEN FARIÑA, in her official capacity as :

Chancellor of the New York City School District, :

:

Defendants. :

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Case No. 17-cv-7150

AMENDED COMPLAINT

PRELIMINARY STATEMENT

1) This action was originally brought by the parent, J.L., on behalf of her son, J.P., a seven-year old boy classified with Other Health Impairment, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. § 1415, *et. seq.*; 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”); the Americans with Disabilities Act of 1990 (“ADA”); New York State Education Law §§ 3202, 3203, §§ 4401 *et. seq.*, and the regulations promulgated thereunder.

2) Defendant New York City Department of Education Defendant (“DOE”) and Carmen Fariña, in her capacity as the Chancellor of the DOE (“the Chancellor”, collectively with the DOE, “Defendants”), employ policies, practices, and procedures, with respect to medically fragile students like J.P., that result in Defendants failing to provide such students all of the services they require simultaneously in order to attend school, including but not limited to nursing services, transportation, and porters.

3) Defendants do not have a coordinated system in place to ensure that necessary nursing, transportation, and porter services for students with disabilities are provided simultaneously and in a timely manner without exclusion from school.

4) The additional Plaintiffs joining the action, H.B., on behalf of M.C., and K.M. and D.A. on behalf of O.A, are parents of medically fragile children who have been, and will be, subjected to these blanket policies, practices, and procedures and have been injured and face continuing injury as a result of these blanket policies, practices, and procedures.

5) Initials are used throughout this Complaint to preserve the confidentiality of sensitive medical, educational, and disability-related information under the IDEA and the Family Educational Rights and Privacy Act of 1974.

6) J.P., M.C., and O.A. are New York City School students who, as a result of medical needs, require individualized nursing services in order to attend school.

7) J.P., M.C., and O.A. each require a nurse to accompany them on bus transportation to and from school (“Bus Nurse”).

8) J.P. and M.C. both require a personal, 1:1 nurse at school to accompany them throughout the day at school (“School Nurse”).

9) O.A. requires a nurse in close proximity to him at school either in his class or on the same or neighboring floor (“Attendant Nurse”).

10) J.P. and M.C. require “porter service”—someone to transport them up and down the stairs of their non-elevator apartment buildings to and from the school bus—in order to attend school.

11) J.P., M.C., and O.A. each use a wheelchair and require specialized bus transportation to and from school.

12) As result of DOE policies, practices, and procedures, the DOE failed to provide simultaneously the necessary nursing, transportation, and porter services for J.P. from September of 2015 through October of 2017; thus J.P. did not attend school for over 2 years, from age 5 to age 7.

13) As result of DOE policies, practices, and procedures, the DOE failed to provide simultaneously the necessary nursing, transportation, and porter services for M.C. from September of 2014 through October of 2017; thus M.C. did not attend school for approximately 3 years, from age 5 to age 8.

14) As result of DOE policies, practices, and procedures, the DOE failed to provide simultaneously the necessary nursing and transportation for O.A. for the month of September 2017; thus O.A.'s mother, K.M. had to miss hours of work every day for one month in order to take O.A. to and from school on the New York City subway.

15) J.P., M.C., O.A., and their parents have suffered irreparable harm as a result of the DOE's policies, practices, and procedures that resulted in the DOE's failure to provide simultaneously nursing, transportation, and porter services that are necessary for these students to attend school.

16) The DOE's policies, practices, and procedures are implemented with gross negligence and reckless indifference to the rights of J.P., M.C., and O.A.

17) As a result of the DOE's failure to have a coordinated system in place to ensure medically fragile students with disabilities receive necessary nursing, transportation, and porter services, J.P., M.C., and O.A. remain at risk of losing nursing services, transportation, and porter services, and thus remain at risk of being excluded from school.

18) As a result of the DOE's systemic policies, practices, and procedures for medically fragile students who require such services, J.P., M.C., and O.A. remain at risk of losing nursing services, transportation, and porter services, and thus remain at risk of being excluded from school.

19) The parents of J.P., M.C., and O.A. bring this action because the DOE's systemic policies, practices, and procedures: (a) result in a denial of a free appropriate public education to medically fragile children, including J.P., M.C. and O.A.; (b) discriminate against medically fragile children, including J.P., M.C. and O.A.; and (c) result in exclusion of medically fragile children, including J.P., M.C. and O.A., from the DOE's programs.

JURISDICTION

20) 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 20 U.S.C. § 1415(i)(2) & (3) and 29 U.S.C. § 794(a). This Court has supplemental jurisdiction over all state law claims herein asserted pursuant to 28 U.S.C. § 1367, and as such, state law claims form part of the same case or controversy as the claims for which this Court has original jurisdiction.

21) The venue is proper under 28 U.S.C. § 1391(b).

22) If successful, Plaintiffs are entitled to costs and attorneys' fees under 20 U.S.C. § 1415(i)(3) and 29 U.S.C. § 794a(a)(2).

PARTIES

23) Plaintiff J.L. is the mother of J.P., a child with a disability who resides in Queens County.

24) J.P. is a seven-year-old New York City student with a disability, whom Defendants have classified with Other Health Impairment.

25) Plaintiff H.B. is the mother of M.C., a child with a disability who resides in Queens County.

26) M.C. is an eight-year-old New York City student with a disability, whom Defendants have classified with Multiple Disabilities.

27) Plaintiffs K.M. and D.A. are the parents of O.A., a child with a disability who resides in New York County.

28) O.A. is a fourteen-year-old New York City student with a disability, whom Defendants have classified with an Orthopedic Impairment.

29) Defendant DOE is the official body charged with the responsibility of 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 2009.) The DOE is a recipient of federal assistance. The DOE is a branch of municipal government in New York City, with its principal place of business located at 52 Chambers Street, New York, New York, 10007.

30) Defendant Carmen Fariña, as the Chancellor of the DOE, is entrusted with the specific powers and duties set forth in N.Y. Educ. Law § 2590-h (McKinney 2010), including oversight of the DOE's provision of education and services to students with disabilities under the

IDEA, ADA, Section 504, and New York Education Law. The Chancellor's principal place of business is located at 52 Chambers Street, New York, New York, 10007.

INDIVIDUAL FACTUAL ALLEGATIONS

J.L. ON BEHALF OF J.P.

J.P. Received Special Education Services Starting from the Age of 11 Months

- 31) J.P. was born on May 7, 2010.
- 32) Immediately after birth, he suffered from a spinal infection and was transferred to the Mt. Sinai NICU.
- 33) J.P. was diagnosed with Ornithine transcarbamylase ("OTC") deficiency, a rare X-linked genetic disorder characterized by complete or partial lack of the enzyme ornithine transcarbamylase, one of six enzymes that play a role in the break down and removal of nitrogen from the body.
- 34) J.P. also exhibited muscle spasms, hydrocephaly (an abnormal buildup of cerebrospinal fluid in the ventricles of the brain), and frequent severe seizures, (15-20 per hour).
- 35) J.P. required a nasal tube and a gastrostomy tube ("G-tube").
- 36) In April of 2011, J.P. started receiving Early Intervention services from the DOE.
- 37) In particular, he received occupational therapy, physical therapy, vision therapy, special instruction, and speech therapy at home.
- 38) In February of 2013, J.L. gave the DOE her consent to conduct an initial evaluation of J.P.'s developmental delays secondary to the OTC deficiency.
- 39) Over the next two months, the DOE conducted the following evaluations and examinations: (a) bilingual social history; (b) bilingual psychological evaluation; (c) occupational therapy evaluation; (d) bilingual speech and language evaluations; (e) preschool

student evaluation summary; (f) bilingual educational evaluation; and (g) bilingual physical therapy evaluation.

40) The DOE's Committee on Preschool Special Education ("CPSE") determined that J.P. was eligible for CPSE services beginning in September of 2013.

41) The CPSE developed an Individualized Education Services Program ("2013 IESP") in April of 2013.

42) J.P. was classified as a Preschool student with disability, eligible for services throughout the 12 months of the year.

43) The IESP contained a "medical alert" stating that J.P. required medical and health care procedures during the school day.

44) The recommended services included: (a) special class with a ratio of six students to one teacher to two teachers' aides; (b) Speech and Language Therapy; (c) Occupational Therapy; (d) Physical Therapy; (e) Vision Therapy; (f) special transportation in the form of a bus with a lift; and (g) a 1:1 Nurse in class five times per week for 30 minutes.

45) The DOE recommended that J.P. attend St. Mary's preschool, where he would receive the services and program in the IESP.

46) J.P. began attending St. Mary's preschool in September of 2013, where he received the services and program in the IESP.

47) In February and March of 2014, the DOE conducted the following evaluations and examinations: (a) occupational therapy evaluation; (b) speech and language evaluation; (c) physical therapy evaluation; and (d) annual review using the "Developmental Assessment of Young Children."

48) In May of 2014, the CPSE determined that J.P.'s IESP did not need to be changed.

49) Thus, in May of 2014, the DOE developed an IESP ("2014 IESP") with the same classification and recommendations as the 2013 IESP.

50) The 2014 IESP also mandated that J.P. receive an "Adult Nurse" to accompany him on the bus to school.

51) J.P. received the services and program recommended in the 2014 IESP at St. Mary's preschool.

J.P.'s 2015 Individualized Education Program

52) In May of 2015, the DOE conducted the following evaluations and examinations: (a) preschool teacher interview and classroom observation and (b) physical examination.

53) The DOE physical examination diagnosed J.P. with asthma, neurological disorder, seizures, vision problems, and speech delays.

54) The DOE physical examination noted at the time that: J.P. had frequently been hospitalized for high ammonia; J.P. had surgery for tracheostomy; J.P. had serious OTC deficiency; J.P. needed a G-tube; and J.P. experienced global delays.

55) The DOE physical examination referred J.P. for evaluations for continued weekly Occupational Therapy and Physical Therapy services in school.

56) Because J.P. was to commence kindergarten, the DOE developed an Individualized Education Program ("J.P. 2015 IEP").

57) The DOE classified J.P. as a student with a disability with Other Health Impairment, eligible for special education services throughout the 12 months of the year.

58) The J.P. 2015 IEP contained a “medical alert” stating that J.P. required medical and health care procedures during the school day.

59) The J.P. 2015 IEP recommended: (a) Special class in all academic areas in Spanish 35 times per week for length of the class period in a class with a 12:1 + 3:1 ratio in a DOE special education classroom in District 75; (b) Individual Occupational Therapy in English twice per week for 30 minutes; (c) Individual Physical Therapy in English three times per week for 30 minutes; (d) Individual Speech-Language Therapy in English three times per week for 30 minutes; and (e) Individual Vision Education services in English twice per week for 30 minutes.

60) The J.P. 2015 IEP also mandated that J.P. receive a Bus Nurse.

61) The J.P. 2015 IEP failed to recommend that J.P. receive a School Nurse, despite demonstrated medical need.

62) The J.P. 2015 IEP required the services and program to be provided starting in September of 2015.

63) In June of 2015, the DOE sent a notice to J.L. informing her that the services and program in the J.P. 2015 IEP would be provided at P009@058 in Maspeth, Queens, starting on September 9, 2015.

J.P. Could Not Attend Kindergarten for the Entire 2015-2016 School Year Due to the DOE’s Systemic Failures

64) When the school year started in September of 2015, the DOE failed to provide J.P. with the Bus Nurse mandated on J.P.’s IEP.

65) As a result, J.L. accompanied J.P. on the bus at the beginning of the school year.

66) When J.L. arrived at the school, she was told that she could not accompany J.P. on the bus.

67) The DOE did not provide a Bus Nurse for J.P. during the entire 2015-2016 school year, from September of 2015 to June of 2016.

68) Because the DOE failed to provide J.P. with his IEP-mandated Bus Nurse, J.P. was unable to, and did not, attend kindergarten during the entire 2015-2016 school year.

69) The DOE also did not provide J.P. home instruction or any educational services during the 2015-2016 school year.

70) As a result, J.P. languished at home.

71) J.P.'s Parent was forced to take time off from work to care for J.P.

72) Between September of 2015 and June of 2016, the DOE provided certain documents to J.L. that, it alleged, had to be filled out by J.P.'s doctors before a Bus Nurse could be approved even though J.P.'s IEP already mandated the Bus Nurse.

73) J.L. is Spanish speaking, and thus entitled to receive educational documents from the DOE translated into Spanish.

74) The DOE provided the documents in English.

75) The DOE failed to provide a Spanish translation.

76) Between September of 2015 and June of 2016, J.L. worked with the staff of St. Mary's Health Care System for Children to provide the DOE with the information it purportedly required.

77) Between September of 2015 and June of 2016, the St. Mary's staff submitted the documents multiple times to Stephanie Sepulveda, a DOE school psychologist at P009@058 in Maspeth, Queens.

78) The DOE rejected the forms, and thus did not provide J.P. a Bus Nurse for the school year, even though J.P.'s IEP mandated that J.P. receive a Bus Nurse to attend school.

J.P. Could Not Attend School for the 2016-2017 School Year Due to the DOE's Systemic Failures

- 79) The 12-month 2016-2017 school year began in July 2016 for J.P.
- 80) In August of 2016, the DOE developed an Individualized Education Program (“J.P. 2016 IEP”).
- 81) J.P.’s 2016 IEP classified J.P. with Other Health Impairment, eligible for services throughout the 12 months of the year.
- 82) The J.P. 2016 IEP contained a “medical alert” stating that J.P. required medical and health care procedures during the school day.
- 83) The J.P. 2016 IEP made the same recommendations as the J.P. 2015 IEP.
- 84) The J.P. 2016 IEP mandated that J.P. receive a Bus Nurse.
- 85) The J.P. 2016 IEP mandated that the services and program were to be provided starting in August of 2016.
- 86) The DOE did not provide a Bus Nurse for J.P. until June of 2017, the very end of the 12-month 2016-2017 school year.
- 87) Because the DOE failed to provide J.P. with his IEP-mandated Bus Nurse, J.P. was unable to attend school for almost the entire 12-month 2016-2017 school year.
- 88) In approximately October of 2016, the St. Mary’s staff resubmitted to the DOE the forms the DOE claimed it now required in order to assign the Bus Nurse.
- 89) Staff from St. Mary’s followed up numerous times with staff from P009@058 but staff at P009@058 repeatedly stated that the forms were pending review.
- 90) In January of 2017, St. Mary’s staff contacted Advocates for Children of New York, Inc. (“AFC”) on behalf of J.L. concerning the failure of the DOE to provide J.P. with his IEP mandated Bus Nurse.

91) On March 6, 2017, School Psychologist Stephanie Sepulveda informed AFC that she had submitted J.P.'s paperwork to Lynn Harris, the Central Office Nursing Supervisor for Special Services at DOE's Office of School Health ("OSH"), in November or December of 2016, and that the request was "pending review."

92) On March 7, 2017, AFC escalated the case to senior staff within the DOE who are responsible for the provision of services for students with disabilities and requested the status of J.P.'s nurse.

93) AFC requested, on behalf of J.L., that the DOE provide J.P. with his IEP-mandated Bus Nurse immediately.

94) On March 8, 2017, Ms. Harris rejected J.P.'s forms again, stating that the forms required additional clarification even though J.P.'s IEP already mandated the provision of a Bus Nurse, claiming that J.P. could not receive his IEP mandated Bus Nurse because:

- a) J.P.'s nursing forms were missing the parent consent page, and J.L. was required to date J.P.'s forms on the same date or after J.P.'s doctors executed the forms;
 - b) J.P.'s asthma accommodation form failed to specify whether his treatment was to be delivered via mouth or trach collar;
 - c) J.P.'s gastrostomy feeding, which was to run for two hours followed by water flush, could not be accommodated during J.P.'s bussing unless he had a specialized feeding tube;
 - d) J.P.'s tracheostomy care and suctioning order needed to be dated by his doctor;
- and,

e) Ms. Harris allegedly needed additional clarification regarding whether J.P. needed pulse oximetry monitoring, oxygen administration, and an order for Diastat, a type of medication.

95) In a follow-up email on March 8, 2017, Ms. Sepulveda informed AFC that J.L. was obligated to fill out an additional new transportation accommodation form even though J.P.'s IEP already required a Bus Nurse.

96) The new transportation accommodation form was provided in English, but not in Spanish, J.L.'s primary language.

97) Between March 8, 2017 and April 28, 2017, AFC worked with J.P.'s doctors and providers to address the purported deficiencies in the forms noted by Ms. Harris.

98) Both the completed forms and the new transportation accommodation form were provided to the DOE on April 28, 2017.

99) J.P.'s medical accommodation form, completed by his physician, Dr. Maureen Braun of Mount Sinai, stated that J.P. required a Bus Nurse and School Nurse.

100) On May 2, 2017, Ms. Harris again rejected J.L.'s forms. A copy of her rejection was forwarded to AFC by Ms. Sepulveda.

101) Ms. Harris gave new reasons why J.P. still could not receive his IEP mandated Bus Nurse, claiming that J.P. could not receive his IEP mandated Bus Nurse because:

- a) J.P.'s feeding schedule for the hours between 6 a.m. and 8 a.m. could not be made on the bus, as the feedings did not comply with OSH protocol;
- b) Ms. Harris required clarification on administration of oxygen to J.P. because she could not accept forms' statement that J.P. was to receive oxygen on a sliding scale; and,

c) the forms failed to identify “what constitutes a fever for this student.”

102) On May 2, 2017, AFC emailed Ms. Sepulveda and asked if the DOE would follow up with Dr. Braun for further clarification.

103) On May 4, 2017, AFC emailed Ms. Sepulveda requesting an update on J.P.’s Nurse.

104) On May 9, 2017, AFC emailed Ms. Sepulveda again requesting an update on J.P.’s Nurse.

105) On May 9, 2017, Ms. Sepulveda informed AFC that J.P. had been approved for a Bus Nurse, but that she was waiting on approval for the School Nurse.

106) The DOE, however, did not assign J.P. a Bus Nurse.

107) On May 10, 2017, the DOE contacted Dr. Braun via email to inform her that the DOE could not take verbal orders for clarification and inquired as to whether J.P.’s doctor could make the written clarifications on the forms.

108) On May 12, 2017, AFC contacted Ms. Sepulveda for an update.

109) Ms. Sepulveda informed AFC that, because the DOE would not accept verbal clarifications from Dr. Braun, J.P.’s forms would need to be resubmitted and that a School Nurse and Bus Nurse still could not be assigned, despite J.P.’s mandate on his IEP for a Bus Nurse.

110) On May 23, 2017, Ms. Rosales resubmitted J.P.’s nursing forms to Ms. Sepulveda, who confirmed receipt by phone.

111) On May 26, 2017, Dr. Braun sent an email to DOE responding to additional requests for information.

112) On that same day, J.L. learned that the school placement offered to J.L. in 2015 and 2016 was no longer available. The DOE also stated that transportation could not be arranged before J.L. enrolled J.P. in school.

113) The DOE agreed to add a full time 1:1 school nurse to J.P.'s IEP, which was done in an IEP dated May 30, 2017 ("J.P. May 2017 IEP").

114) The J.P. May 30, 2017 IEP states that there is to be an annual review for an IEP on or about August 9, 2017.

115) To date, the DOE has failed to convene a new IEP meeting.

116) The J.P. May 30, 2017 IEP states that J.P. is to receive educational services throughout the 12-month school year, including July and August.

The DOE's Systemic Failure to Coordinate Transportation, Nursing, and Porter Services Resulted in Further Exclusion of School for J.P.

117) Between May 30, 2017 and June 2, 2017, J.L. enrolled J.P. in the new school offered by the DOE, P993@130.

118) On June 5, 2017, J.P. was in OPT's system, with a school start date of June 7, 2017.

119) On June 6, 2017, the DOE was informed that J.P. required a "porter service".

120) A porter is necessary for students in wheelchairs who live in apartment buildings without elevators. The porter, provided by the DOE, carries the student in the wheelchair from the student's apartment to the school bus and after the student returns from school on the school bus, the porter carries the student in the wheelchair from the school bus to the student's apartment.

121) J.P. requires a porter because his family lives on the third-floor of a building that does not have an elevator.

122) The DOE stated that it would evaluate the request.

123) The DOE has never denied that J.P. requires a porter.

124) The DOE failed to provide a porter when J.P. began school in the beginning of June 2017.

125) As a result of the DOE's failure to provide a porter for J.P., in the morning, J.P.'s Parent had to carry him down the stairs to the first floor, where his wheelchair is kept, so that he could be taken to the bus.

126) In the afternoon, J.P.'s Parent had to miss work so that she could meet J.P. after school and carry him upstairs to their apartment.

127) J.L.'s employer informed her that if she continued to miss work, she would be at risk for losing her job. After that, J.P. could not go to school because there was no one who could meet him after school.

128) The DOE was informed that J.P. was unable to attend school because a porter was not provided on July 17, 2017.

129) On July 18, 2017, for the first time since receiving the porter request in the beginning of June, the DOE informed J.L., through counsel, that it had evaluated the porter service request but that J.P.'s wheelchair could not be navigated safely on the staircase.

130) On July 25, 2017, the DOE informed J.L., through her counsel, that it was looking into two options: first, finding a smaller wheelchair or, second, having an ambulance transport J.P. to and from school.

131) On August 9, 2017, the DOE represented that it was still attempting to locate a smaller wheelchair.

132) The DOE also represented that either the ambulance or the smaller-wheelchair would be available at the start of the school year in September of 2017.

133) The 2017-2018 school year for 12-month students like J.P. commenced in the beginning of July, 2017.

134) As a result of the DOE's failure to provide appropriate transportation and additional accommodations necessary to transport J.P. between the school bus and his apartment, J.P. missed school for the beginning of the 2017-2018 12-month school year in July and August.

135) On September 6, 2017, the day before the New York City public school Fall semester commenced, the DOE informed J.L. through counsel that transportation was scheduled to pick up J.P. the following morning.

136) J.P., however, did not attend school in September 2017, due to continued systemic failures of the DOE.

137) On September 13, 2017, when the bus came to pick J.P. up at his home, the bus had no room for J.P.'s wheelchair, so he was unable to attend school. The DOE was immediately informed.

138) On September 14, 2017, the bus did not come to pick up J.P. for school.

139) Because the DOE's failures to provide for J.P.'s nursing, transportation, and porter needs excluded J.P. from school from July 2017 through September, in September 2017, the nurse originally assigned to J.P. in June 2017 was no longer available for J.P.

140) Thus, when the bus came to pick up J.P. on Friday, September 15, 2017, he could not get on the bus because he did not have a nurse.

141) Despite working with the DOE for months, due to the failure of the DOE to have any system of coordination for nursing, transportation, and porter services, J.P. still had no

porter, no appropriate transportation, no additional accommodations so the porter could transport him between the bus and the apartment, no bus, and no nurse.

142) On September 20, 2017, J.P.'s mother filed this Complaint and moved for a temporary restraining order and preliminary injunction pending resolution of the action.

143) On September 28, 2017, the Court issued a preliminary injunction ordering the DOE to provide J.P. an appropriately sized wheelchair or evac-chair, porter service, bus service, and a nurse no later than October 10, 2017.

144) On or about October 10, 2017, as a result of the preliminary injunction, J.P. began receiving all of his services and is attending school for the first time in over 2 years.

145) J.P. and his parent suffered irreparable harm as a result of the DOE's failure to provide him with his necessary nursing, transportation, and porter services for more than two school years.

146) Because of the DOE's failure to have practices and procedures to coordinate nursing, transportation, and porter services and because of the DOE's systemic policies, practices, and procedures for medically fragile students who require individual nursing, J.P. remains at risk to lose his nursing services, and thus no longer be able to attend school.

H.B. ON BEHALF OF M.C.

M.C. Did Not Attend School During the 2014-2015 and 2015-2016 School Years Due to the DOE's Systemic Failures

147) M.C. was born on November 4, 2009.

148) M.C. is a medically fragile child who has cerebral palsy and Menkes disease, a terminal condition that affects copper levels in the body, leading to copper deficiency.

149) M.C. has the following medical needs: he is non-ambulatory; quadriplegic; non-verbal; has a tracheotomy; is oxygen dependent; has seizures; is dependent upon a G-tube for all nourishment; requires a wheelchair; and requires daily medication.

150) M.C. turned five in November 2014 and was therefore entitled to enter kindergarten in September 2014.

151) M.C. spent the 2014-2015 and 2015-2016 school years, in their entirety, at home without instruction.

152) On December 21, 2016, the DOE held an Individualized Education Program (“M.C. IEP”) meeting for M.C.

153) At that meeting, a Bus Nurse and School Nurse for M.C. were discussed but the DOE did not recommend a Bus Nurse and School Nurse.

154) The DOE’s District Representative told M.C.’s family that the DOE could not recommend a Bus Nurse and School Nurse on the IEP until OSH reviewed documentation that the family was required to submit.

155) No one from OSH was present at the IEP meeting or took part in discussing M.C.’s educational or medical needs.

156) The DOE sent H.B. a School Location Letter on or around December 22, 2016 offering M.C. a seat at Q009 at Q58-24Q58:PS 58.

157) H.B. is Urdu speaking, and thus entitled to receive educational documents from the DOE translated into Urdu.

158) The DOE provided the documents in English.

159) The DOE failed to provide an Urdu translation.

160) M.C. could not attend school because he needed a Bus Nurse and School Nurse.

161) The DOE began providing M.C. with home instruction on or about March 2017.

162) This was the first time that the DOE provided any educational services to M.C.

163) By May 30, 2017, M.C.'s nursing forms had been submitted to the DOE's OSH at least 4 times between 2016 and 2017.

164) St. Mary's, which provides services to H.B.'s family, submitted the nursing paperwork on or about February 2017 but OSH rejected the request.

165) St. Mary's re-submitted M.C.'s nursing forms on March 20, 2017 but OSH rejected the request two months later in May 2017.

166) Although M.C. is supposed to receive educational services throughout the 12 month school year, including the summer, the DOE stopped providing home instruction in June 2017.

167) On July 25, 2017, St. Mary's submitted M.C.'s nursing documents again, directly to Ms. Harris at OSH.

168) M.C.'s nursing documents from his physicians state that M.C. needs a 1:1 nurse for both transportation to and from school and the school day because of his medical needs.

169) On July 27, 2017, Ms. Harris rejected the nursing documents submitted by H.B.

170) On August 4, 2017, St. Mary's staff sent Ms. Harris a revised set of nursing orders from M.C.'s pulmonologist.

171) St. Mary's staff also informed Ms. Harris that M.C.'s gastroenterologist required clarification from the DOE regarding what additional information was needed and provided the doctor's contact information to Ms. Harris.

172) On August 4, 2017, AFC escalated M.C.'s case to the DOE's Office of General Counsel because of the DOE's failure to recommend a Bus Nurse and School Nurse for M.C. for multiple school years, despite his medical needs.

173) Later in August, St. Mary's also provided the DOE with updated gastroenterology forms for M.C., as requested by OSH.

M.C. Missed Months of the 2017-2018 School Year to the DOE's Systemic Failures

174) The DOE scheduled an IEP meeting for August 23, 2017.

175) The DOE's IEP team agreed to recommend Bus Nurse and School Nurse on M.C.'s IEP.

176) At the IEP meeting, H.B. requested porter services to facilitate bringing M.C. up-and-down the stairs from his apartment to the school bus. The DOE's District Representative at the meeting stated that she did not have the authority to add porter services to M.C.'s IEP.

177) The DOE's District Representative told H.B. to contact the DOE's OPT for assistance pursuant to DOE policy and procedure.

178) On August 24, 2017, AFC sent an email to the Legal Compliance Liaison at OPT, to request porter services for M.C.

179) The Legal Compliance Liaison said that OPT would conduct a home visit to determine the feasibility of porter service.

180) On September 5, 2017, AFC emailed the Legal Compliance Liaison at OPT for an update regarding M.C.'s porter services.

181) On September 7, 2017, the Legal Compliance Liaison replied that OPT had approved porter services, but that M.C. could not attend school because the brakes on M.C.'s wheelchair were broken.

182) The Legal Compliance Liaison at OPT also stated that OPT could not arrange busing until H.B. had M.C.'s wheelchair fixed, meaning that M.C. was still unable to attend school.

183) On September 7, 2017, AFC emailed the DOE requesting that the DOE repair M.C.'s wheelchair so that M.C. could attend school.

184) On September 11, 2017, AFC asked for a status from the DOE regarding M.C.'s wheelchair.

185) The same day, DOE informed AFC by e-mail that DOE staff had spoken to H.B. and advised her to contact the company that initially provided the student with the wheelchair so that the company could repair it.

186) On September 29, 2017, M.C.'s Physical Therapist from St. Mary's, informed AFC that he completed a home visit to inspect M.C.'s wheelchair and determined that OPT was incorrect: M.C.'s chair was fully functional.

187) On September 29, 2017, AFC emailed the Legal Compliance Liaison at OPT to inform the DOE that M.C.'s wheelchair was not broken.

188) AFC again requested that OPT arrange M.C.'s bussing as soon as possible.

189) On October 2, 2017, the Legal Compliance Liaison at OPT stated that if the DOE was able to confirm the wheelchair was functional, M.C. could begin receiving busing right away, while porter services were being arranged.

190) In the interim, at OPT's request, H.B. agreed to carry M.C. up-and-down the stairs from their apartment to the curb.

191) The Legal Compliance Liaison at OPT assured AFC that M.C.'s bussing would begin the following date, October 3, 2017.

192) On October 2, 2017, AFC contacted the DOE's Office of General Counsel to ensure that M.C.'s nursing would be available when the bus started.

193) On October 3, 2017, M.C.'s bus arrived but H.B. was unable to send M.C. to school because there was no Bus Nurse to attend to M.C.'s medical needs.

194) That same day, AFC informed the DOE's Office of General Counsel that the Bus Nurse was not on the bus, resulting in M.C. being unable to attend school.

195) On October 4, 2017, no bus came for M.C., and he was unable to attend school. AFC immediately informed the DOE's Office of General Counsel.

196) On October 4, 2017, Unique Nursing, the nursing agency assigned to M.C.'s case, informed the family that an interim nurse had been secured for Thursday, October 5, 2017, and Friday, October 6, 2017. The representative also stated that the agency was still searching for a permanent nurse to begin the next week on October 10, 2017.

197) On October 4, 2017, AFC emailed Ms. Jaffe to confirm that OPT was aware that a nurse had been secured to travel with M.C. on October 5, 2017 and October 6, 2017.

198) AFC received an out-of-office email providing OPT's general customer service number.

199) On October 4, 2017, AFC called OPT customer service to confirm that OPT was aware that a nurse had been secured to travel with M.C. on October 5, 2017 and October 6, 2017.

200) The OPT customer service representative informed AFC that M.C. was not in the DOE's system because no bus route had been created for him yet. The representative said that routing a bus would take an additional 5 to 7 days.

201) On October 5, 2017, a bus arrived to take M.C. to school, but H.B. was unable to send M.C. to school because the DOE again did not provide a Bus Nurse.

202) On October 6, 2017, a bus arrived to take M.C. to school, but H.B. was unable to send M.C. to school because the DOE again did not provide a Bus Nurse.

203) On October 6, 2017, H.B. learned, through St Mary's staff, that M.C. had a Bus Nurse assigned to him for October 10, 2017, but that the bus would not let the Bus Nurse on the bus because OPT claimed that the IEP did not provide for M.C. to have a nurse on the bus, even though the IEP mandates a nurse on the bus.

204) Counsel for H.B contacted counsel for Defendants and informed them that if M.C. did not have a Bus Nurse, School Nurse, porter service and bussing simultaneously, they would file a Complaint and seek a temporary restraining order and move for a preliminary injunction.

205) On or about October 12, 2017, facing litigation, the DOE was finally able to coordinate M.C.'s receipt of a Bus Nurse, School Nurse, porter service and bussing simultaneously for the first time.

206) M.C. and his parents suffered irreparable harm as a result of the DOE's failure to provide him with his necessary nursing, transportation, and porter services for more than two school years.

207) Because of the DOE's failure to have practices and procedures to coordinate nursing, transportation, and porter services and because of the DOE's systemic policies, practices, and procedures for medically fragile students who require individual nursing, M.C. remains at risk to lose his nursing services, and thus no longer be able to attend school.

K.M. AND D.A. ON BEHALF OF O.A.

O.A. Did Not Receive a Bus Nurse or Attendant Nurse Due to the DOE's Systemic Failures

208) O.A. was born on May 1, 2003.

209) He began to exhibit gross motor delays at 10 months and received Early Intervention services beginning at 12 months.

210) O.A. was at first classified tentatively as having cerebral palsy. When he was four, after years of genetic testing, O.A. was diagnosed as having a progressive neuromuscular disorder with a quadriplegic level of involvement.

211) O.A. used a walker at 18 months, and by six years of age began using a manual wheelchair that he could self-propel.

212) O.A. still uses a manual wheelchair but is unable to propel it for more than short distances.

213) O.A. has fine motor and gross motor delays and a quadriplegic level of impairment.

214) O.A. began experiencing tonic-clonic seizures when he was six years old. In July 2015, the seizures increased in frequency, peaking during the fall of 2016, when he experienced as many as three tonic-clonic seizures a week.

215) During a seizure, O.A. loses all bodily control, twitching violently with a pool of saliva in his mouth. He needs to be monitored very carefully during a seizure, to ensure that he continues to breath and does not aspirate on saliva.

216) When O.A. experiences a seizure for more than five minutes, he must be given a nasal rescue medication called Midazolam. The spray pump must be primed and O.A.

positioned so that the medication can be administered. The process of getting the medication and preparing it for administration can take a minute or more.

217) If a seizure is allowed to go on for over five minutes, the result could be brain damage or death.

218) O.A. has received special education services from the DOE since he began attending school.

219) On June 20, 2017, the DOE developed an Individualized Education Program (“O.A. IEP”) for O.A., classifying him as having an “Orthopedic Impairment.”

220) The O.A. IEP mandates that the DOE provide O.A. with bussing to and from school in a bus with a wheelchair lift.

221) The O.A. IEP mandates that the DOE provide O.A. with a Bus Nurse.

222) The O.A. IEP states that O.A. “requires a daily nurse to follow him class to class due to his susceptibility to seizures” and specifies under “Service Delivery Recommendations” that the nurse assigned to O.A. will be in “Close proximity to student: in class, on same/neighboring floor for access,” and under “Location of service” notes that the nurse should be in “close proximity: classroom/will act as his field trip nurse” (“Attendant Nurse”).

223) O.A. currently attends a New York City public high school with typically developing peers.

224) O.A. can and does participate fully in the academic curriculum. Last year, he passed the Algebra 1 Regents Examination.

225) O.A.’s high school has only one school nurse for 1,700 students.

226) O.A. attends classes located primarily on the third floor of a wide and crowded building.

227) The school nurse's office is on the first floor.

228) At the end of the 2016-2017 school year, the school nurse at O.A.'s then-middle school provided K.M and D.A. with forms that had to be completed by O.A.'s doctor and sent back into the DOE so that the DOE could assign O.A. a Bus Nurse and Attendant Nurse in time for the September start of the 2017-2018 school year.

229) O.A.'s doctors completed the forms, and his Parents provided them to the DOE in July of 2017.

230) On July 28, 2017, a nurse from the DOE's OSH informed K.M. that all of the forms had been completed.

231) On September 5, 2017, a bus company called First Steps contacted K.M. and informed her that a bus route had been set up for the first day of school on September 7, 2017.

232) K.M. inquired as to whether the DOE had assigned a Bus Nurse.

233) First Steps informed K.M. that the bus company was not responsible for assigning a Bus Nurse, and that it was up to K.M. to arrange for one.

234) First Steps also informed K.M. that the bus company would not transport O.A. without a Bus Nurse and that she could not accompany O.A. to school on the bus in place of the nurse.

235) K.M. called OPT on or about September 6, 2017, the day before O.A.'s first day of school, inquiring about the Bus Nurse and Attendant Nurse.

236) OPT informed K.M. that nurses were assigned by OSH.

237) On September 6, 2017, K.M. called Ms. Harris at OSH, leaving several voicemails.

238) On September 6, 2017, K.M. attempted to contact the Borough Nursing Director for Manhattan, but was unable to reach her or leave a message because her voice mailbox was full.

239) On September 6, 2017, K.M. sent emails to the OSH email addresses that appear on the DOE's website.

240) No one responded to K.M.'s voice messages and emails the rest of the week on September 6, 7, or 8, 2017.

241) The DOE did not provide a Bus Nurse on the first day of school on September 7, 2017.

242) Without a Bus Nurse, so that O.A. did not miss school when the school year commenced on September 7, 2017, K.M. began transporting him personally every day on public transportation.

243) O.A.'s neuromuscular disorder causes him severe fatigue, and the extra time and chaos of getting to and from school on rush-hour subways using his wheelchair exacerbates the problem. He was not able to participate fully in school because of this fatigue, and he was often too tired to finish his school work.

244) O.A. did not have his IEP-mandated Bus Nurse or Attendant Nurse on September 7 or September 8, 2017.

245) The Central Office Nursing Supervisor, Ms. Harris, finally returned K.M.'s call on September 11, 2017.

246) During that call, Ms. Harris claimed—for the first time since July 2017—that OSH needed both K.M. and O.A.'s doctors to fill out more forms. Ms. Harris emailed these forms to K.M.

247) Ms. Harris claimed that OPT, not OSH, handled the process for bus nurses, and that OSH only handled the process for school nurses. Ms. Harris's words suggested that the Bus Nurse and Attendant Nurse still had to be approved by both OPT and OSH, despite the fact the DOE mandated these services on O.A.'s IEP.

248) Ms. Harris claimed that she had only first been informed of O.A.'s case a few days earlier, and that she would start contacting nursing agencies.

249) Notably, the form Ms. Harris provided K.M. did not request any new information about O.A. that K.M. had not previously provided.

250) The form appeared to be about K.M.'s justification for a Bus Nurse, the need for which had been established in O.A.'s IEP.

251) After K.M. contacted a number of DOE officials, OSH stopped asking for the form.

252) Because the DOE continued to not provide a Bus Nurse, K.M. continued to take O.A. to school on public transportation.

253) On September 13, 2017, Ms. Harris informed K.M. that OSH had located a Bus Nurse, and that the nurse's agency would contact K.M.

254) Marcelo Wright from Theracare called K.M. at 7:20 p.m. on the evening of September 14, 2017. He left a message explaining that they had an available Bus Nurse, but that he had not been able to reach the nurse to inform the nurse of the assignment. He stated that he would keep trying to reach the nurse, asked K.M. to return his call, and provided a phone number.

255) K.M. returned the call to Mr. Wright at 7:30 p.m., but his voice mailbox was full and not accepting messages.

256) K.M. immediately called the main number for Theracare and left a message.

257) K.M. never heard back from Theracare.

258) On September 14, 2017, K.M. emailed Ms. Harris and other DOE officials, letting them know that Theracare had not actually arranged a nurse.

259) Shortly thereafter, Ms. Harris called K.M. to say that OSH would send the contract out to multiple agencies simultaneously, even though the DOE's standard practice was to send it out to one agency at a time.

260) From September 11 through September 15, 2017, O.A. still had neither a Bus Nurse nor Attendant Nurse. K.M. continued to take O.A. to school on public transportation from September 11 through September 15, 2017.

261) On September 19, 2017, nursing agencies Horizon Health Services ("HHS") and RCM contacted K.M. Both agencies asked her to fax in the nursing forms that she had already provided twice to the DOE at the IEP meetings in July and September.

262) Both HHS and RCM informed K.M. that nurses were not currently available, but that they would continue to search.

263) K.M. continued calling HHS, RCM, OSH, and the Special Education office about the fact that, two weeks into the school year, O.A. still had neither his IEP-mandated Bus Nurse nor Attendant Nurse.

264) On September 21, 2017, HHS informed K.M. that it had a nurse available for O.A. but was waiting for fingerprinting clearance. She was also informed that HHS would not be able to guarantee substitute coverage if a nurse was absent.

265) From September 18 through September 22, 2017, O.A. still had neither a Bus Nurse nor Attendant Nurse. K.M. continued to take O.A. to school on public transportation from September 18 through September 22, 2017.

266) On Monday, September 25, 2017, HHS informed K.M. that it was still waiting for clearance, but that they may have a nurse for Tuesday and Thursday.

267) HHS did not provide a Bus Nurse or Attendant Nurse on Tuesday, September 26, 2017.

268) On the evening of September 29, 2017, HHS called K.M. and informed her that it had a Bus Nurse and Attendant Nurse available for Monday, October 2, 2017.

269) HHS also informed K.M. that it had another Bus Nurse and Attendant Nurse available to work regularly throughout the school year on Tuesdays and Thursdays, but that it did not have a nurse available to work as a Bus Nurse and Attendant Nurse on Mondays, Wednesdays, and Fridays throughout the school year.

270) From September 25 through September 29, 2017, O.A. still had neither a Bus Nurse nor Attendant Nurse. K.M. continued to take O.A. to school on public transportation from September 25 through September 29, 2017.

271) From September 29 through October 3, 2017, the DOE provided nurses that could not meet O.A.'s medical needs, were inappropriate, or were not able to work all five days of the week.

272) That same week, Counsel for K.M and D.A. contacted counsel for Defendants and informed them that if O.A. did not have a permanent Bus Nurse, Attendant Nurse, and bussing simultaneously within a few days, they would file a Complaint and seek a temporary restraining order and move for a preliminary injunction.

273) Facing litigation, O.A. received a permanent Bus Nurse and Attendant Nurse and bussing simultaneously on October 19, 2017.

274) O.A. and his parent suffered irreparable harm as a result of the DOE's failure to provide him with his necessary nursing services.

275) Because of the DOE's failure to have practices and procedures to coordinate nursing and transportation and because of the DOE's systemic policies, practices, and procedures for medically fragile students who require individual nursing, O.A. remains at risk to lose his nursing services, and thus no longer be able to attend school.

Plaintiffs Incurred Injuries Because the DOE's Policies, Practices, and Procedures Result in the Failure to Serve Medically Fragile Students Who Need Nursing to Attend School

276) Each of the Plaintiffs incurred their injuries as a direct result of the DOE's policies, practice, and procedures.

277) In particular, the DOE's failure to have a coordinated system in place to ensure that necessary nursing, transportation, and porter services for students with disabilities are provided simultaneously and in a timely manner resulted in the exclusion of J.P. and M.C. from school for more than two school years, and O.A. almost being excluded from school but for his mother daily missing hours of work to take the time to transport him to and from school.

278) Plaintiffs should not be required to exhaust their administrative remedies.

279) Exhaustion is not necessary when such exhaustion would be futile.

280) Exhaustion is not necessary because plaintiffs claim past and future injuries due to the DOE's systemic failures and seek system-wide relief.

281) Because the DOE convenes a new IEP meeting, and creates a new IEP, every school year, the DOE's systemic policies, practices, and procedures for medically fragile

students who require individual nursing put J.P., M.C., and O.A. at risk every year to lose their nursing services, and thus no longer be able to attend school.

282) Upon information and belief, the DOE has no system to coordinate the nursing, transportation, and porter services of medically fragile students who require these services.

283) The DOE's decision on whether to recommend an Attendant Nurse, School Nurse, or Bus Nurse (collectively, "Nurse Services") on the IEPs of J.P., M.C., and O.A. rested entirely with the DOE's OSH, as a result of DOE policy.

284) No representative from OSH attended the IEP meetings of J.P., M.C., and O.A. because of DOE practice, policy, and procedure.

285) Upon information and belief, the DOE does not have a policy for a timeline for OSH to approve or reject a request for Nurse Services.

286) Due to OSH's practices, even after the Plaintiffs submitted medical documentation clearly demonstrating the medical need for nursing services, OSH denied or delayed approval of Nurse Services because of requests for information or documentation that was unnecessary to evaluate the students' needs for nurses.

287) As a result of these systemic practices, J.P. and M.C. were excluded from school for more than two school years.

288) Upon information and belief, other students have been excluded from school because of these same DOE policies, practices, and procedures.

289) Upon information and belief, it is DOE's policy not to recommend porter service on an IEP at the IEP meeting.

290) Upon information and belief, the decision as to whether to authorize porter service resides with the DOE's OPT and does not occur at the IEP meeting.

291) Upon information and belief, it is the DOE's policy to not have representatives of OPT attend IEP meetings.

292) Because the decision as to whether to recommend porter service resides does not occur at the IEP meeting, the provision of special education services and bussing is delayed for students who require porter service.

293) Upon information and belief, when a student receives Nurse Services on an IEP, the DOE has no system to ensure that a student's case is timely referred to a nurse service for assignment.

294) Instead, despite the mandate on the IEP, OSH often requests additional documentation, delaying or denying students' right to services—when those services are necessary to attend school—and right to an education.

295) Upon information and belief, there is no coordination between OSH and OPT concerning the assignment of Nurse Services, the provision of porter services (when needed), and the provision of bussing services, resulting in the failure to simultaneously provide these services to students and delaying access to special education services, sometimes for years.

296) As a result of this systemic lack of coordination, Plaintiffs suffered injuries including but not limited to exclusion from school, inappropriate education, and loss of work.

297) Upon information and belief, this lack of coordination has resulted in additional students and parents incurring injuries including but not limited to exclusion from school, inappropriate education, and loss of work.

298) Upon information and belief, a Hearing Officer cannot claim address these systemic failures or order the system-wide relief Plaintiffs seek herein.

299) For the aforementioned reasons, exhaustion is futile.

CAUSES OF ACTION

Count I: Failure to Offer a Free Appropriate Public Education

300) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

301) Defendants' systematic failures and illegal policies, practices, and procedures have resulted in the failure of the DOE to provide New York City Students, including J.P., M.C., and O.A., with IEP mandated Nurse Services, porter services, and transportation.

302) Defendants' systematic failures and illegal policies, practices, and procedures have resulted in the failure of the DOE to mandate Nurse Services and porter services on the IEPs of medically fragile students including J.P. and M.C.

303) As a result, Defendants have deprived New York City Students, including J.P., M.C., and O.A., with their right to a free appropriate public education under IDEA, 20 U.S.C. § 1400, et seq., and the regulations promulgated thereunder.

304) Defendants have violated the rights of the Plaintiffs under 20 U.S.C. §§ 1400, et seq.

Count II: Violation of the New York State Education Law

305) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

306) Section 4402 of the New York State Education Law requires school districts to "furnish suitable educational opportunities for children with handicapping conditions by one of the special services" listed in NYSEL § 4401(2).

307) Defendants' systematic failures and illegal policies, practices, and procedures have resulted in the failure of the DOE to provide New York City Students, including J.P., M.C.,

and O.A., with Nurse Services, porter services, and transportation, which they need to attend school, violating their rights under New York State Education Law §§4401, 4404 and 4410 and Part 200 of the Regulations of the New York State Commissioner of Education, 8 N.Y.C.R.R. § 200.

Count III: Violation of Section 504 of the Rehabilitation Act

308) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

309) Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its implementing regulations provide, “no otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4(a).

310) As an entity subject to Section 504, the DOE must provide equal opportunity to qualified students with disabilities to participate or benefit from any aid, benefit, or service they make available. 34 C.F.R. § 104.4(b)(1)(ii).

311) Section 504 also requires the DOE to provide a free appropriate public education to students with disabilities.

312) J.P., M.C., and O.A. are medically fragile and their impairments affect the major life activities of caring for themselves, performing manual tasks, walking, standing, lifting, bending, speaking, learning, and working. 42 U.S.C. § 12102(2)(A).

313) J.P., M.C., and O.A. are individuals with disabilities as defined by Section 504. 29 U.S.C. § 705(20)(B); referencing 42 U.S.C. § 12102(1).

314) J.P., M.C., and O.A. are otherwise qualified individuals with disabilities who meet essential eligibility requirements to receive services from or participate in the programs or activities of the DOE. *See* 42 U.S.C. § 12131(2); 29 U.S.C. § 794(a).

315) The DOE is required to provide J.P., M.C., and O.A. with free and appropriate public education services, as required under Section 504.

316) Defendants' systematic failures and illegal policies, practices, and procedures have resulted in the failure of the DOE to provide New York City Students, including J.P., M.C., and O.A., with Nurse Services, porter services, and transportation.

317) Defendants' systematic failures and illegal policies, practices, and procedures have discriminated against New York City School students, including J.P., M.C., and O.A. as persons with disabilities, by denying J.P., M.C., and O.A. equal access and otherwise eliminating their access to the DOE's programs and services as compared to their non-disabled peers. *See* 34 C.F.R. §§ 104.4(a), 104.4(b)(ii) and (iv).

318) Defendants' systematic failures and illegal policies, practices, and procedures against New York City School students, including J.P., M.C., and O.A., is illegal disability-based discrimination that violates Section 504 of the Rehabilitation Act of 1973.

319) Defendants' systematic failures and illegal policies, practices, and procedures against New York City School students, including J.P., M.C., and O.A., was with gross negligence and reckless indifference.

320) Despite repeated requests for the DOE to provide IEP mandated or medically necessary nursing services for years, the DOE provided no support for Plaintiffs. As a result, students like J.P. and M.C. lost years of school during formative years of development.

321) As a proximate cause of these violations of Section 504, J.P., M.C., and O.A. have suffered harm as set forth above.

Count IV: Violation of the Americans with Disabilities Act of 1990

322) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

323) Title II of the ADA and its implementing regulations prohibits public entities, including local educational agencies, from excluding or denying people with disabilities the benefits of its services, programs, or activities, or to discriminate based on disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.104 & 130(a).

324) Prohibited disability-based discrimination by public entities includes the failure to provide qualified individuals with disabilities an equal opportunity to participate in or benefit from aids, benefits, or services or “otherwise limit” a qualified individual with a disability in the enjoyment of any right, privilege, aid, benefit, or service. 28 C.F.R. § 35.130(b)(1)(h) & (vii).

325) J.P., M.C., and O.A. are individuals with physical and cognitive impairments.

326) J.P.’s, M.C.’s, and O.A.’s impairments affect the major life activities of caring for themselves, performing manual tasks, walking, standing, lifting, bending, speaking, learning, and working. 42 U.S.C. § 12102(2)(A).

327) J.P., M.C., and O.A. are individuals with disabilities as defined by Section 504. 29 U.S.C. § 705(20)(B); referencing 42 U.S.C. § 12102(1).

328) J.P., M.C., and O.A. are otherwise qualified individuals with disabilities who meet essential eligibility requirements to receive services from or participate in the programs or activities of the DOE. *See* 42 U.S.C. § 12131(2).

329) Defendants' systematic failures and illegal policies, practices, and procedures resulting in the failure of the DOE to provide New York City Students, including J.P., M.C., and O.A., with Nurse Services, porter service, and transportation, is illegal disability-based discrimination that violates Title II of the Americans with Disabilities Act of 1990.

330) Defendants' systematic failures and illegal policies, practices, and procedures against New York City School students, including J.P., M.C., and O.A., was with gross negligence and reckless indifference.

331) Despite repeated requests for the DOE to provide IEP mandated or medically necessary nursing services for years, the DOE provided no support for Plaintiffs. As a result, students like J.P. and M.C. lost years of school during formative years of development.

332) As a proximate cause of these violations of Title II of the Americans with Disabilities Act of 1990, J.P., M.C., and O.A. have suffered harm as set forth above.

Count V: Violations of 42 U.S.C. § 1983- IDEA

333) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

334) Defendants have not afforded New York City School students, including J.P., M.C., and O.A., with an equal opportunity to attend and receive free and appropriate public education services from the DOE.

335) The exclusion of medically fragile New York City School students who need provision of coordinated Nurse Services, porter service, and transportation, including J.P., M.C., and O.A., from the DOE's free and appropriate public education services has deprived them of their rights under the IDEA and, thus, deprives them of their rights secured by federal law in violation of 42 U.S.C. § 1983.

Count VI: Violations of 42 U.S.C. § 1983 - Section 504

336) Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

337) Defendants' exclusion of medically fragile New York City School students who need provision of coordinated Nurse Services, porter service, and transportation, including J.P., M.C., and O.A., from free and appropriate public education services from the DOE solely by reason of their disability has deprived them of their rights under Section 504 and, thus, deprives them of rights secured by federal law in violation of 42 U.S.C. § 1983.

Count VI: Injunctive Relief

338) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

339) Defendants' systematic failures and illegal policies, practices, and procedures have resulted in the failure of the DOE to provide medically fragile New York City Students who need provision of coordinated Nurse Services, porter service, and transportation, including J.P., M.C., and O.A., with Nurse Services, porter service, and transportation.

340) J.P., M.C., and O.A. are eligible to receive special education services every year, and every year the DOE convenes a new IEP meeting; thus J.P., M.C., and O.A. are continuously subjected to Defendants' systematic failures and illegal policies, practices, and procedures with regard to the recommendation and provision of coordinated nursing, transportation, and porter services.

341) The Plaintiffs have substantial likelihood of success on the merits of their claims.

342) The interests of justice will be served by the Court ordering the DOE to immediately order:

- a) the DOE to establish a system to ensure that students with medically documented needs for Nurse Services are not denied or delayed recommendations for nurses on their IEPs;
- b) OSH to attend IEP meetings when a student may require a Nurse Services;
- c) when Nurse Services are mandated on a student's IEP, OSH must immediately refer the student's case to a nursing service for assignment of a nurse within five days of the IEP finalization;
- d) the DOE to agree to authorize porter service, when required, on IEPs; and
- e) the DOE to develop a system that requires OSH and OPT to coordinate the provision and assignment of Bus Nurses and School Nurses, porter services (when needed), and bussing services, so that students receive these services simultaneously and without exclusion from school.

Count VII: Declaratory Judgment

343) The Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

344) A valid case or controversy exists between the parties.

345) Plaintiffs seek a declaration that the DOE's policies, procedures, customs, patterns, and/or practices with regard to Nurse Services, porters, and transportation for medically fragile students deprive Plaintiffs of their statutory rights, are illegal and/or invalid, and are in contravention of the DOE's statutory duty to assure that Plaintiffs' children, J.L., M.C., and O.A., receive a free appropriate public education.

346) J.P., M.C., and O.A. have suffered injuries in fact.

347) There is a causal connection between their injuries and the DOE's systematic failures and illegal policies, practices, and procedures.

348) It is likely their injuries will be redressed by a judgment declaring that Defendants' policies, practices, and procedures, as described throughout, violate the IDEA, ADA, Section 504, New York State Education Law, and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue the following relief:

- A.** A judgment declaring that the DOE's policies, procedures, customs, patterns, and/or practices with regard to Nurse Services, porters, and transportation for medically fragile students deprive Plaintiffs of their statutory rights, are illegal and/or invalid, and are in contravention of the DOE's statutory duty to assure that Plaintiffs' children receive a free appropriate public education;
- B.** A preliminary and permanent injunction ordering the DOE to: (a) order that DOE establish a system to ensure that students with medically documented needs for Nurse Services are not denied or delayed recommendations for nurses on their IEPs; (b) order OSH to attend IEP meetings when a student may require a Nurse Services; (c) order that when Nurse Services are mandated on a student's IEP, OSH must immediately refer the student's case to a nursing service for assignment of a nurse within five days of the IEP finalization; (d) order the DOE to agree to authorize porter service, when required, on IEPs; and (e) develop a system that requires OSH and OPT to coordinate the provision and assignment of Nurse Services, porter services (when needed), and bussing services, so that students receive these services simultaneously.

C. Issuing a Judgment that:

- i. The DOE failed to provide J.P., M.C., and O.A. a free appropriate public education, in violation Plaintiffs' rights under the IDEA and New York Education Law;
- ii. Defendants unlawfully discriminated against J.P., M.C., and O.A. under Section 504, by excluding them from their rights to receive a free appropriate public education and failing to accommodate their disabilities;
- iii. Defendants unlawfully discriminated against J.P., M.C., and O.A. under the ADA, by excluding them from their rights to receive a free appropriate public education and failing to accommodate their disabilities;
- iv. J.P.'s, M.C.'s, and O.A.'s exclusion from the DOE's free and appropriate public education services deprived J.P., M.C., and O.A. of their rights under the IDEA, thus, deprives them of rights secured by federal law in violation of 42 U.S.C. § 1983;
- v. J.P.'s, M.C.'s, and O.A.'s exclusion from the DOE's free and appropriate public education services deprived J.P., M.C., and O.A. of their rights under Section 504 and, thus, deprives them of their rights secured by federal law in violation of 42 U.S.C. § 1983;
- vi. ordering the DOE to: (a) order that DOE establish a system to ensure that students with medically documented needs for Nurse Services are not denied or delayed recommendations for nurses on their IEPs; (b) order OSH to attend IEP meetings when a student may require a Nurse Services; (c) order that when Nurse Services are mandated on a student's IEP, OSH

must immediately refer the student's case to a nursing service for assignment of a nurse within five days of the IEP finalization; (d) order the DOE to agree to authorize porter service, when required, on IEPs; and (e) develop a system that requires OSH and OPT to coordinate the provision and assignment of Nurse Services, porter services (when needed), and bussing services, so that students receive these services simultaneously and without exclusion from school.

- vii. ordering the DOE to pay for compensatory services for Plaintiffs;
- viii. ordering monetary damages under the applicable statutes;
- ix. awarding Plaintiffs their costs and attorney's fees; and
- x. granting such other and further relief as may be appropriate.

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