

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE P., a minor under the age 21 years, :
by his mother PASCUALA S.; MARK P., a :
minor under the age 21 years, by his :
mother ELAINE P.; MILTON C., a minor :
under the age 21 years, by his mother :
JACQUELINE C.; JOSEPH N., a minor under :
the age 21 years, by his mother MARIA :
N.; STEVEN R., a minor under the age 21 :
years, by his mother EDITH R.; DAVID R. :
a minor under the age 21 years, by his :
mother ANA AYALA R.; individually and :
upon behalf of all other persons :
similarly situated, :

Plaintiffs, :

- against - :

GORDON M. AMBACH, individually and as :
New York State Commissioner of Education; :
FRANK J. MACCHIAROLA, individually and :
as Chancellor of the New York City :
Board of Education; STEPHEN R. AIELLO, :
individually and as President of the :
New York City Board of Education; JAMES :
F. REGAN, MIGUEL O. MARTINEZ, JOSEPH G. :
BARKAN, AMELIA ASHE, ROBERT J. CHRISTEN, :
MARJORIE A. LEWIS, individually and as :
Members of the New York City Department :
of Education, :

Defendants. :

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COMPLAINT

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PRELIMINARY STATEMENT

1. This is a class action brought by handicapped children on the ground that defendants are depriving them of a free appropriate public education required by law. This deprivation has occurred through defendants' failure to evaluate and place

handicapped children in appropriate programs in a timely fashion. Plaintiffs seek declaratory and injunctive relief directing the defendants to provide them forthwith with the appropriate education required under the due process and equal protection clauses of the fourteenth amendment to the United States Constitution, the Education for All Handicapped Act, Public Law 94-142, (20 U.S.C. § 1401, et seq.), § 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and New York Education Law § 4401, et seq.

JURISDICTION

2. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343. This action arises under the fourteenth amendment to the United States Constitution and is authorized by 42 U.S.C. § 1983 and by 28 U.S.C. §§ 2201, 2202 and Rule 57, Federal Rules of Civil Procedure, which pertains to declaratory judgments. This action also arises under the Supremacy Clause of the United States Constitution, 20 U.S.C. § 1401, et seq., and 29 U.S.C. § 794.

3. This action is also authorized by the Education Law of the State of New York, Sections 3202, 4401, et seq., Since all state and federal claims herein are derived from a common nucleus of operative facts, this Court has pendent jurisdiction to hear and determine such state and federal statutory claims.

PLAINTIFFS

4. Plaintiff JOSE P. is fifteen-years-old and resides in

New York, New York with his mother PASCUALA S.

5. Plaintiff MARK P. is six years old and resides in Bronx, New York with his mother ELAINE P.

6. Plaintiff MILTON C. is twelve years old and resides in Bronx, New York with his mother JACQUELINE C.

7. Plaintiff JOSEPH N. is eight years old and resides in Bronx, New York with his mother MARIA N.

8. Plaintiff STEVEN R. is thirteen years old and resides in Bronx, New York with his mother EDITH R.

9. Plaintiff DAVID R. is six years old and resides in Bronx, New York with his mother ANA AYALA R.

CLASS ACTION ALLEGATIONS

10. Named plaintiffs bring this action on their own behalf and, pursuant to Rule 23 a and b (2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. Plaintiffs' class is composed of all handicapped children living in New York City, aged five through twenty-one, who, although they are entitled to a free appropriate public education, have not been promptly evaluated and placed in an appropriate program after defendants were notified in writing of the need for evaluation.

11. The class is so numerous that joinder of all members is impracticable. The class consists of thousands of persons who are awaiting evaluation or placement. The questions of law and fact