# United States District Court, Northern District of Illinois

| Name of Assigned Judge or Magistrate Judge | David H. Coar | Sitting Judge if Other than Assigned Judge | |
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| **CASE NUMBER** | 05 C 655 | **DATE** | 7/20/2005 |
| **CASE TITLE** | Bd. of Educ. of Ottawa Township High School Dist. 140 et al. v. U.S. Dep't. of Educ. et al. | | |

**DOCKET ENTRY TEXT:**

Defendants' motions to dismiss [# 18 and # 24] are GRANTED. Plaintiffs' complaint is DISMISSED without prejudice. If Plaintiffs wish to refile, they must do so by August 25, 2005.

■[ For further details see text below.] Docketing to mail notices.

## STATEMENT

Before this Court are two motions to dismiss: one filed by the U.S. Department of Education and Margaret Spellings in her official capacity ("Federal Defendants") and one filed by the Illinois State Board of Education and Dr. Randy Dunn in his official capacity ("State Defendants."). For the reasons stated below, both motions are GRANTED. Plaintiffs' complaint is DISMISSED without prejudice. If Plaintiffs wish to refile, they must do so by August 25, 2005.

Plaintiffs, the Boards of Education for the Ottawa Township High School and Elementary School districts in Illinois and four special education students and their parents, filed their single count complaint on February 3, 2005. Before filing the complaint, the school districts in question all failed to make adequate yearly progress with respect to their students with disabilities and so were identified as needing improvement under the No Child Left Behind Act of 2001 (the "NCLBA"), 20 U.S.C. §6301 *et. seq*.

Plaintiffs argue that the NCLBA is inconsistent with the Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C.A. §1400 *et. seq*. In their complaint, Plaintiffs assert that the school districts must employ "systematic remediation activities" with respect to the education of their disabled students in order to meet the State's standard for adequate yearly progress and thus comply with the NCLBA. These systematic remediation activities, according to Plaintiffs, will require the school districts to change the individualized education plans ("IEPS") of disabled students "without regard to the individual needs of the students within that subgroup," in contravention of the IDEA. They request that this Court declare that two sections of the NCLBA–§6311, State Plans, and §6316, Academic Assessment and Local Educational Agency and School Improvement–are invalid.

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| Courtroom Deputy Initials: | kdt(lc) |

**STATEMENT**

Based on the complaint as it is currently written, Plaintiffs fail to satisfy the requirements for Article III standing. "The party invoking federal jurisdiction bears the burden of establishing the elements of standing." *Perry v. Village of Arlington Heights*, 186 F.3d 826, 829 (7th Cir. 1989) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). A party seeking to invoke a federal court's jurisdiction must demonstrate three things: (1) an "injury in fact"; (2) a "causal relationship between the injury and the challenged conduct" and (3) a "likelihood that the injury will be redressed by a favorable decision." *Id.* (citing *Lujan*, 504 U.S. at 560). Each element "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of litigation." *Id.*

Plaintiffs fail to establish an injury in fact. Plaintiffs claim that they "have adequately alleged they have suffered an injury in fact in that they have alleged that Plaintiff School Districts are required to employ systemic remediation activities which require the modification of individual students' IEPs without regard to the student's disability." This conclusory statement is insufficient to establish standing. Plaintiffs fail to establish that the NCBLA requires them to make systemic changes in violation of the IDEA. The NCLBA does not mandate the specific actions that a school district must take: the statute leaves those pedagogical questions to the actors implementing it. Plaintiffs repeatedly claim that they must make changes "without regard to" the needs of students with disabilities, but as Federal Defendants correctly note, nothing in the NCLBA keeps School District Plaintiffs from implementing changes that take into account the IEPs of students with disabilities–and indeed, the text of both the NCLBA and the IDEA suggest the exact opposite conclusion. Moreover, Plaintiffs insistence that they must make systemic changes that disregard individual IEPs is puzzling, to say the least, when there are certainly systemic changes they can make that do not require the modification of individual IEPS, such as appointing an outside expert, decreasing managerial authority, or replacing ineffective staff. At best, Plaintiffs complaint indicates that they will choose to implement systemic reform that may violate the IDEA; such voluntary choice does not an injury make.

Nor do Plaintiffs explain how IEP modifications–necessarily designed to improve student performance–would harm students: as Federal Defendants aptly note, in order to achieve adequate yearly progress, the academic performance of disabled students must improve. Presumably, if the school districts are attempting to comply with the NCLBA, they will aim to improve student academic performance.

As Plaintiffs lack standing to seek declaratory relief, this Court declines reach the issue of whether the Eleventh Amendment bars suit. *Sierakowski v. Ryan*, 223 F.3d 440, 445 (7th Cir. 2000).

Enter:

/s/ David H. Coar
David H. Coar
United States District Judge

Dated: **7/20/05**