

CT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

MAR 30 2005

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

BOARD OF OTTAWA TOWNSHIP HIGH )  
SCHOOL DISTRICT 140, LASALLE COUNTY, )  
ILLINOIS; BOARD OF EDUCATION OF )  
OTTAWA ELEMENTARY SCHOOL DISTRICT )  
141, LASALLE COUNTY, ILLINOIS; T.H., A )  
MINOR BY HIS MOTHER AND FATHER AND )  
NEXT FRIEND, S.H. AND C.H.; S.H. AND C.H. )  
INDIVIDUALLY; H.G., A MINOR, BY HER )  
MOTHER AND NEXT FRIEND L.G.; L.G. )  
INDIVIDUALLY; M.H., BY HER MOTHER AND )  
FATHER AND NEXT FRIEND J.H., AND A.H.; )  
AND J.H. AND A.H. INDIVIDUALLY, )

Plaintiffs,

v.

THE U.S. DEPARTMENT OF EDUCATION; )  
MARGARET SPELLINGS, U.S. SECRETARY )  
OF EDUCATION, IN HER OFFICIAL )  
CAPACITY; THE ILLINOIS STATE BOARD )  
OF EDUCATION; AND DR. RANDY J. DUNN, )  
INTERIM ILLINOIS STATE )  
SUPERINTENDENT OF EDUCATION, IN HIS )  
OFFICIAL CAPACITY )

Defendants.

No. 05 C 0655

Hon. David H. Coar  
Judge Presiding

**ILLINOIS STATE BOARD OF EDUCATION AND DR. RANDY DUNN'S  
12(b)(1) MOTION TO DISMISS**

NOW COME Defendants, THE ILLINOIS STATE BOARD OF EDUCATION and DR.  
RANDY J. DUNN, INTERIM ILLINOIS STATE SUPERINTENDENT OF EDUCATION, in  
his official capacity, by their attorney, LISA MADIGAN, Attorney General of Illinois, and move  
the Court to dismiss the complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil  
Procedure on the grounds that the Court lacks subject matter jurisdiction over this case.

In support of this motion, Defendants state as follows:

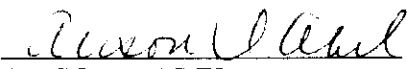
1. This suit against the Illinois State Board of Education (“ISBE”) and its Interim Superintendent of Education, Dr. Dunn in his official capacity, is barred by the Eleventh Amendment. Dr. Dunn does not enforce the challenged federal statute. Suit against him is not authorized by Ex parte Young, 209 U.S. 123 (1908).

2. The Plaintiffs lacks standing to sue. Defendants ISBE and its Interim Superintendent of Education have not taken any adverse action against Plaintiffs which has caused them any injury in fact, nor are Plaintiffs facing any imminent injury in fact from any actions of these Defendants. Absent any adverse action, there is no case or controversy under Article III of the Constitution.

3. A memorandum of law is submitted in support of this motion.

Respectfully submitted,

LISA MADIGAN  
Attorney General of Illinois

  
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Defendants. )

No. 05 C 0655

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**MEMORANDUM OF LAW IN SUPPORT OF  
ILLINOIS STATE BOARD OF EDUCATION AND DR. RANDY DUNN'S  
12(b)(1) MOTION TO DISMISS**

Defendants, THE ILLINOIS STATE BOARD OF EDUCATION and DR. RANDY J.  
DUNN, INTERIM ILLINOIS STATE SUPERINTENDENT OF EDUCATION, in his official  
capacity, by and through their attorney, LISA MADIGAN, Illinois Attorney General, submit the  
following memorandum of law in support of their motion to dismiss.

## BACKGROUND

Plaintiffs, Ottawa Township High School District 140 and Elementary School District 141, along with four special education students and their parents, bring this action to challenge the validity of a federal statute. Specifically, Plaintiffs allege that the mandates of the No Child Left Behind Act of 2001, 20 U.S.C. §6301 *et seq.* (“NCLBA”), regarding the application of state achievement standards to special education students, conflict with the mandates of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, (“IDEA”) requiring the education of special education students to be guided by the implementation of individualized education plans. Because of this alleged conflict, Plaintiffs seek a declaratory judgment that Section 6311, “State Plans” and Section 6316, “Academic Assessment and Local Educational Agency and School Improvement,” of the NCLBA are invalid. Plaintiffs bring this action under the Declaratory Judgment Act, 28 U.S.C. §2201.

The NCLBA is a “comprehensive education reform statute,” whose purpose is “to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic standards and State academic assessments.” 20 U.S.C. §§ 6301, Complaint, ¶¶ 28, 29. The Act seeks to accomplish this purpose through a variety of means including “holding schools, local educational agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education.” 20 U.S.C. §6301(4), Complaint, ¶30. States and local educational agencies are authorized to receive federal funds to carry out these purposes, provided that they abide by various conditions and requirements under the NCLBA. 20 U.S.C. §§ 6302(i),