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MICHAEL W. DOBBINS UNITED STATES DISTRICT COURT
CLERK, U.S. DISTRICT COURT DISTRICT OF ILLINOIS - EASTERN DIVISION

BOARD OF EDUCATION 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)
MOTIER AND FATHER AND NEXT FRIEND, S.H.)
AND C.H.; S.H. AND C.H. INDIVIDUALLY; E.C.,)
A MINOR, BY HIS MOTHER AND NEXT FRIEND)
D.C.; D.C. INDIVIDUALLY; IL.G., A MINOR, BY HER)
MOTIER 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.

JAR

05C 0655

Case No.

JUDGE COAR

Judge:

Magistrate MAGISTRATE JUDGE DENLOW

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME the Plaintiffs, the BOARD OF EDUCATION OF OTTAWA TOWNSHIIP
HIGH SCHOOL DISTRICT 140, LASALLE COUNTY, ILLINOIS; the BOARD OF EDUCATION
OF OTTAWA ELEMENTARY SCHOOL DISTRICT 141, LASALLE COUNTY, ILLINOIS; T.H.,
A MINOR, BY HIS MOTHER AND FATHER AND NEXT FRIEND, C.H. AND S.H.; C.H. AND
S.H. INDIVIDUALLY; E.C., A MINOR, BY HIS MOTHER AND NEXT FRIEND D.C.; D.C.

INDIVIDUALLY; I.L.G., A MINOR, BY HER MOTHER AND NEXT FRIEND L.G.; AND L.G. INDIVIDUALLY; M.H., A MINOR, BY HER MOTHER AND FATHER AND NEXT FRIEND J. H., AND A. H.; AND J. H. AND A. H. INDIVIDUALLY, by and through their attorneys, Raymond A. Hauser, Christina Sepiol and Anthony G. Scariano of Scariano, Himes and Petrarca, Chtd., and as their Complaint, state as follows:

PARTIES

1. Plaintiff Board of Education of Ottawa Township High School District 140 is a local public school district located in Ottawa, LaSalle County, Illinois, maintaining a system of schools in grades 9 through 12.

2. Plaintiff Board of Education of Ottawa Elementary School District 141 is a local public school district located in Ottawa, LaSalle, County, Illinois, maintaining a system of schols in grades Kindergarten through 8.

3. Plaintiff school boards are bodies politic and corporate which may sue and be sued in all courts and places where judicial proccedings are had. (105 ILCS 5/10-2)

4. Plaintiff T.H., a minor, is a special education student in the 11th grade at Ottawa Township High School.

5. Plaintiff C.H. is the mother of Plaintiff T.H., a minor.

6. Plaintiff S.H. is the father of Plaintiff T.H., a minor.

7. Plaintiff E.C., a minor, is a special education student in the 12th grade at Ottawa Township High School.

8. Plaintiff D.C. is the mother of Plaintiff E.C., a minor.

9. Plaintiff H.G., a minor, is a special education student in the 5th grade at Central School.

10. Plaintiff L.G. is the mother of Plaintiff H.G., a minor.

11. Plaintiff M.H., is a special education student who is a 6th year senior at Ottawa Township High School.

12. Plaintiff J.H. is the mother of Plaintiff M.H.

13. Plaintiff A.H. is the father of the Plaintiff M.H.

14. Defendant U.S. Department of Education ("DOE") is the federal agency responsible for administering and implementing the *No Child Left Behind Act of 2001* ("NCLBA"), (P.L. 107-110).

15. Defendant Margaret Spellings is the U.S. Secretary of Education and is responsible for the overall direction, supervision and coordination of all activities of the DOE and is responsible for administering and implementing the NCLBA.

16. Defendant Illinois State Board of Education ("ISBE") is the State agency authorized and required to establish educational policies and guidelines on the NCLBA for school districts in Illinois.

17. Defendant, Dr. Randy J. Dunn is Interim Superintendent of Schools for the State of Illinois and is responsible for supervising public schools in Illinois and administering and implementing the NCLBA.

JURISDICTION

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. § 2201 and 2202 because this is a case of actual controversy within the Court's jurisdiction seeking a declaratory judgment that portions of the No Child Left Behind Act are invalid.

STATEMENT OF CLAIM

19. The NCLBA requires school districts to employ categorical and systemic change if they have not, or any school within the district has not, met or exceeded State standards within various subgroups, including a subgroup of special education students, as assessed by a standardized test administered to all students within the district.

20. The NCLBA, while identifying subgroups of students, does not allow for the individual differences of these groups, specifically the needs of students with disabilities in the special education subgroup.

21. The NCLBA requires Plaintiff school districts to alter or amend the Individual Education Programs ("IEPs") of students within the special education subgroup in order to specifically address any deficiency in meeting or exceeding State standards.

22. The *Individuals with Disabilities Education Act* ("IDEA") requires the IEP of a special education student to be uniquely tailored to the student's needs at they relate to his/her disability.

23. Plaintiff school districts cannot comply with the NCLBA requirements of categorical and systemic change to the IEPs of students within the special education subgroup while also

adhering to the IDEA mandates of treating each special education student as an individual through his/her IEP.

24. The NCLBA requirements dictate a violation of the rights afforded to disabled students as provided by the IDEA.

25. Plaintiff school districts believe the provisions of these laws to be in direct conflict as it relates to their obligation to address both State standards under the NCLBA and the individual needs of disabled students under the IDEA.

26. Significant harm to individual students within the special education subgroup will result if their IEPs are altered and amended for the sole purpose of meeting NCLBA requirements; such action would ignore the individual needs stemming from the individual students' disabilities and fail to focus on meaningful and realistic goals, programming and services.

NO CHILD LEFT BEHIND ACT

27. On January 8, 2002, President Bush signed into law the NCLBA, which amended the *Elementary and Secondary Education Act*, 20 U.S.C. §§ 6301 *et seq.*

28. The NCLBA, which is aimed at strengthening elementary and secondary schools, is a comprehensive education reform statute. 20 U.S.C. § 6301(1)-(12).

29. The purpose of the NCLBA 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.

30. The NCLBA's purpose is to be accomplished through a variety of means including, among other things, "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).

31. The NCLBA significantly raises expectations for States, local educational agencies, schools and students in that all students are expected to meet or exceed State standards in reading and in math within 12 years (*i.e.*, no later than 2012). Under the NCLBA, each State establishes a definition of adequate yearly progress (“AYP”) to use each year to determine the achievement and progress of students within various subgroups of each school district and school. 20 U.S.C. 6311(b)(2)(C).

32. The indicators to determine AYP in the State of Illinois are:

- a. State assessment of student performance in reading and mathematics on a standardized test;
- b. Student attendance rates at the elementary school level and graduation rates at the high school level; and
- c. Participation rates on student assessments.

33. Achievement levels apply to the student population as a whole and to each of the four demographic subgroups designated under NCLBA: (1) economically disadvantaged students, (2) students from major racial and ethnic groups, (3) students with disabilities and (4) student with limited English proficiency. 20 U.S.C. § 6311(b)(2)(C)(v)(II)(aa-dd).

34. In Illinois, if a subgroup has more than 40 students, the school must separate out the scores of those students, and those students as a group must meet AYP.

35. Students with special education eligibility who are receiving special education services are included in the calculation of students meeting AYP standards if they constitute a subgroup.

36. Each school district Plaintiff has a sufficient number of students to create a subgroup of special education students.

37. On an annual basis, the ISBE notifies districts and schools of their status regarding AYP as well as remedial activities that are required.

38. Ottawa Township High School, located in District 140, is in School Improvement Status and must offer School Choice.

39. Shepard Middle School, located in Plaintiff Ottawa Elementary School District 141, is in School Improvement Status.

40. Ottawa Elementary School District 141 is in School Improvement Status.

41. As a result of the AYP requirement and the subgroup definition, Plaintiff's Ottawa High School District 140 and Ottawa Elementary School District 141 (collectively referred to as "Plaintiff School Districts"), were put on watch status or were required to complete remediation activities solely due to the achievement scores from the special education student population.

42. If the special education student population achievement scores were excluded from the Plaintiff School Districts' calculations for purposes of making AYP, Plaintiff School Districts would have achieved AYP. In essence, Plaintiff School Districts are not categorically "failing schools" or in need of the significant remediation activities required under the NCLBA, except for their subgroup of special education students.

43. As a result, the Plaintiff School Districts must direct remediation activities solely to their subgroup of special education students.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

44. Under the *Individuals with Disabilities Education Act*, 20 U.S.C. Ch. 33, § 1400 *et seq.*, all children with disabilities are entitled to a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.

45. A free appropriate public education is available to all children with disabilities residing in Illinois between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. 20 U.S.C. § 1400(d).

46. To the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled. The removal of children with disabilities from the regular education environment should occur only in cases where the nature and severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily. 20 U.S.C. § 1413(e)(4)(B).

47. To effectuate a free appropriate public education, school districts are responsible for developing an individualized education program ("IEP") for each student identified with a disability. This document has many requirements but has the holistic approach of outlining the child's disability, the manner in which it affects him/her in the educational environment and the specialized instruction, services or placement that will enable the child to meet their individual needs. 20 U.S.C. § 1414(d) *et seq.*

48. On a scheduled basis, the goals and objectives of the IEP are updated regarding student progress; that information is then communicated to parents. 20 U.S.C. § 1414(d).

49. On an annual basis, the IEP is reviewed to document and assess the student's progress toward their individual educational goals and objectives and to plan for future educational programming and services. 20 U.S.C. § 1414(d).

50. The IEP goals and objectives, while aligned with the Illinois State Learning Standards, are required to reflect the needs of the individual student as they relate to his/her unique disability. 20 U.S.C. § 1414(d).

51. Plaintiffs T.H., M.H. and E.C. are special education students at Plaintiff Ottawa High School District 140.

52. Plaintiff H.G. is a special education student at Central School in Plaintiff Ottawa Elementary School District 141.

53. As a result of Plaintiff Ottawa High School District 140's failure to make AYP, the IEPs of T.H., M.H., E.C., and other students within the special education subgroup must be modified in order to employ systemic remediation activities so that students within the subgroup meet or exceed State standards within the timeframe dictated by the NCLBA.

54. As a result of Plaintiff Ottawa Elementary School District 141 and Shepard Middle School's failure to make AYP, the IEP of H.G. and other students within the special education subgroup must be modified in order to employ systemic remediation activities so that students within the subgroup meet or exceed State standards within the timeframe dictated by the NCLBA.

55. Such remediation activities must be directed so that the subgroup of special education students will meet or exceed Illinois State standards by no later than 2012, without regard to the

individual needs of the students within that subgroup and their individual ability to meet the State standards and/or the timeframe dictated by the NCLBA.

COUNT I

DECLARATORY JUDGMENT OF NCLBA INVALIDITY

56. Adherence to the mandates of the NCLBA requires the Plaintiff School Districts to adopt systemic measures in an effort to maintain and or improve student performance and achievement within the special education subgroup.

57. Adherence to the mandates of the IDEA requires Plaintiff School Districts to individually assess and program for the unique needs of Plaintiffs T.H.'s, E.C.'s, H.G.'s and M.H.'s disabilities, as well as those other students within the special education subgroup of each Plaintiff School District.

58. Plaintiff School Districts who did not achieve AYP are required to employ or plan for systemic change/remediation activities that focus on the special education student population.

59. Plaintiffs T.H., E.C., H.G. and M.H. were making meaningful and significant progress on their individualized goals and objectives contained in their IEPs prior to their school's failure to make AYP.

60. As a result of their school failing to make AYP, Plaintiffs T.H., E.C., H.G. and M.H. must now have their IEPs changed solely because of a categorical, district-wide mandatory remediation activity within the special education subgroup mandated by the NCLBA.

61. The changes to Plaintiffs T.H.'s, E.C.'s, H.G.'s and M.H.'s IEPs would be absent any consideration for each student's unique disability, the effect of the disability on academic and functional abilities or the realistic gains to be made by such change in violation of the IDEA.

62. Rather, the changes to Plaintiffs T.H.'s IEPs will be designed to meet or exceed State standards developed for regular education students without regard to the individual needs of the Plaintiffs.

63. The systemic, categorical changes required by the NCLBA force the Plaintiff School Districts to reconvene IEP teams and amend, alter or change the IEP of a student with a disability, including Plaintiffs T.H., E.C., H.G. and M.H. without regard to the actual needs of the student in violation of the purpose and scope of the IDEA.

64. Changes to Plaintiffs T.H.'s, E.C.'s, H.G.'s, M.H.'s and other students' IEPs initiated by mandates of the NCLBA would ignore unique differences and disregard individuals with disabilities.

65. Section 6311, State Plans and Section 6316, Academic Assessment and Local Educational Agency and School Improvement, of the NCLBA are in conflict with the federal mandates as contained within the IDEA and are therefore invalid insofar as they require the establishment of a special education subgroup, subject to assessment by standardized test, and required to meet an artificially imposed AYP.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, BOARD OF EDUCATION 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; E.C., A MINOR, BY HIS MOTHER AND NEXT FRIEND D.C.; D.C.


INDIVIDUALLY; H.G., A MINOR, BY HER MOTHER AND NEXT FRIEND L.G.; AND 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 respectfully request the Court to enter judgment against Defendants, 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 SUPERINTENDENT, ILLINOIS STATE BOARD OF EDUCATION, IN HIS OFFICIAL CAPACITY, to include:

1. A declaration that Section 6311, State Plans and Section 6316, Academic Assessment and Local Educational Agency and School Improvement, of the No Child Left Behind Act are invalid.
2. An award of reasonable costs and attorneys' fees in connection with this action; and
3. All such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

SCARIANO, HIMES AND PETRARCA, CHTD.

Dated: February 3, 2005

By: 

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