

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYDIA REBECCA GASKIN,	:	CIVIL ACTION NO.
a minor, by her parents	:	
Joseph and Karen Gaskin;	:	
	:	CLASS ACTION
JOHN FORTE, a minor, by his	:	
parents Daniel and	:	
Michaelene Forte;	:	
	:	
HASSAN ADIB SABREE, a minor,	:	
by his mother Hana	:	
Sabree;	:	
	:	
MERRIN RAINEY, a minor, by her	:	
parents, Thomas and Linda	:	
Rainey;	:	
	:	
SAMUEL LUCKINBILL, a minor,	:	
by his parents, Thomas	:	
and Wendy Luckinbill;	:	
	:	
LISA McCANN, a minor, by her	:	
mother, Lisa McCann;	:	
	:	
ELIZABETH MOSER, a minor, by	:	
her mother, Giovanna Moser;	:	
	:	
ANNE CORR, a minor, by her	:	
foster parents and	:	
next friends, Patrick	:	
and Judith Corr;	:	
	:	
BRETT MICHAEL KONESKI, a minor,	:	
by his parents, James	:	
and Dawn Koneski;	:	
	:	
MICHAEL WINTERING, a minor, by	:	
his parents, Michael and	:	
Nancy Wintering;	:	
	:	
SARAH NOE, a minor, by her	:	
parents, Roland and Janice	:	
Noe;	:	
	:	
TIFFANY ZIMENOFF, a minor, by	:	
her parents, Richard and	:	
Robin Zimenoff;	:	
	:	
THE ARC OF PENNSYLVANIA,	:	
on behalf of its members;	:	
	:	
LEARNING DISABILITIES	:	
ASSOCIATION OF	:	
PENNSYLVANIA, on behalf	:	
of its members;	:	

Department of Education; :
 :
 EARL H. HORTON; MADGE K. BENOVITZ; :
 E. PETER BENZING; RONALD R. :
 COWELL; EDWARD DONLEY; :
 KARL R. GIRTON; EDITH W. ISACKE; :
 R. GERARD LONGO; BEATRICE :
 MOORE; JAMES J. RHOADES; :
 HOWARD SELEKMAN, :
 in their official capacities :
 as members of the State :
 Board of Education and the :
 Council of Basic Education, :
 : :
 Defendants. :

COMPLAINT

Introduction

1. This is an action to enjoin the Pennsylvania Secretary of Education from frustrating the effective education of students with disabilities whose parents seek their education in regular class with supplementary aids and services. It is brought by students with disabilities and their parents, on behalf of themselves and all others similarly situated, and by statewide and regional organizations created by parents, citizens with disabilities, advocates and professionals, to redress the violation of federal law which requires

- (a) comprehensive personnel development;
- (b) the "adoption of promising educational practices and materials";
- (c) an "appropriate educational program" for each child, that is, one reasonably calculated to confer real educational benefits, and
- (d) the education of children with disabilities "to the maximum extent appropriate, with children who do not have disabilities."

2. Federal law is plain that a school district, when determining whether a child with disabilities can be included in a regular classroom, "'must consider the whole range of supplemental aids and services'" that will make inclusion possible, including "speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids and services appropriate to the child's particular disabilities." Oberti v. Board of Education of the Borough of Clementon, 995 F. 2d 1204, 1216 (3d Cir. 1993), quoting Greer v. Rome City School District, 950 F.2d 688, 696 (11th Cir. 1991). The school "must also make efforts to modify the regular education program to accommodate a disabled child." Id., citing 34 C.F.R. Part 300, App. C. Question 48. Defendants, officials of the Pennsylvania Department of Education (PDE), have failed to assure that local school districts provide "the whole range" of supplementary aids and services in regular classes, or that personnel are trained to provide those services adequately.

3. As a result of defendants' inactions, some plaintiff students are mainstreamed in regular classrooms but are denied the specially designed instruction, modification of the regular curriculum and other supplementary aids and services that they need to receive an appropriate education, while other plaintiff students are unnecessarily segregated and denied their right to be educated with students who do not have disabilities to the maximum extent appropriate.

4. Plaintiffs have been denied the benefits of specialized instruction in regular education settings because the defendants have failed to discharge their duty under the Individuals with Disabilities Education Act (IDEA) to assure that each local

education agency in Pennsylvania develops and implements a plan for comprehensive personnel development. Such plans must ensure that all personnel receive the training necessary to fulfill the purposes of IDEA, including the integration of students with disabilities in regular classes to the maximum extent appropriate with supplementary aids and services.

5. Although school district personnel development plans do not meet the requirements of IDEA and are not adequate to assure mastery by district personnel of the provision of supplementary aids and services in regular classes, PDE routinely approves these plans and does not require school districts to provide the training required by IDEA.

6. Plaintiffs seek injunctive relief in the form of an order to PDE to assure that school district personnel are adequately trained to educate students with disabilities in regular classes with supplementary aids and services and to assure that students with disabilities have access, to the maximum extent appropriate, to supplementary aids and services in regular classrooms.

Jurisdiction and Venue

7. This court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343. Plaintiffs' cause of action arises under 20 U.S.C. § 1401 et seq., 29 U.S.C. § 794, and 42 U.S.C. §§ 12161-12165. Venue in this district is proper under 28 U.S.C. § 1391(b).

Plaintiffs

8. LYDIA REBECCA GASKIN is ten years old and lives with her parents, Joseph and Karen Gaskin, in Carlisle, Pennsylvania. Lydia is a student in the Moreland Elementary School of the Carlisle Area School District (CASD). She has Down Syndrome and, as is typical of

children with Down Syndrome, she has retardation, low muscle tone and difficulties with fine motor control and coordination.

9. Lydia has friends in the neighborhood who do not have disabilities, and she participates in community activities such as Sunday School and YMCA camp with nondisabled peers. Her parents have asked that she be fully included in regular classes of the Carlisle Area School District with appropriate supportive services.

10. Lydia attended preschool programs in Carlisle including a regular nursery school. When she reached kindergarten age in 1989, her parents enrolled her in CASD and asked the district to place her in a regular kindergarten with support and related services. CASD offered the Gaskins three placement choices: a Multihandicapped Assessment class operated by the intermediate unit; a class for trainable mentally retarded (TMR) children in a middle school; and regular kindergarten with no supplementary aids and services. The district informed the Gaskins that it could place Lydia in a regular kindergarten, but could not provide her with supplementary aids and services in that setting.

11. While the Gaskins first chose the intermediate unit program, they soon noticed regression and other negative changes in Lydia's behavior and asked that Lydia be placed in a regular kindergarten class of CASD with an Individualized Education Program (IEP) and supplementary aids and services, including consultation by the special education director to the classroom teacher and the help of a teacher aide. The District agreed to place Lydia in the regular kindergarten, but refused to develop an IEP for her on the ground that the district had other children with disabilities placed in regular classrooms without IEPs and did not want to set a "precedent" that might force it to develop IEPs for

these children.

12. The district agreed to provide certain supplementary aids and services to Lydia in the regular classroom including speech therapy and a full-time classroom aide. The director of special education for the district agreed to consult with the regular kindergarten teacher.

13. Lydia made progress in the kindergarten class. The signs of regression that the Gaskins had observed were completely reversed. Her speech improved. She made friendships with the children in her class. The following year, both the school district and Lydia's parents agreed that she would repeat the regular kindergarten with the same supplementary aids and services.

14. In spring and summer of 1991, the Gaskins asked that Lydia progress into regular first grade with supplementary aids and services. However, the district informed the Gaskins that the full-time aide Lydia had during 1990-91 would not be available for the coming year. The district instead produced an IEP and Notice of Recommended Assignment (NORA) placing Lydia into a full-time learning support class, while promising to "look into" a more inclusive program. The Gaskins signed the NORA because the director of special education had told their advocate that if they did not sign it Lydia would not be able to attend school in the fall.

15. The Gaskins were unable to resolve their differences with the school district and requested a due process hearing. The hearing was held in February and March, 1992 before a hearing officer assigned by the Pennsylvania Right to Education Office, an agency that coordinates special education hearings under contract with PDE. Like many hearing officers recruited and trained by the

Right to Education Office, the hearing officer assigned to Lydia's case was a special education professional employed by an intermediate unit.

16. Prior to the hearing, the district made a settlement proposal which it defended at the hearing as its proposed program and placement. According to that proposal, Lydia would be mainstreamed in regular classes for approximately 36% of the school day. For 51% of the school day Lydia would be somewhere other than a regular class and the remaining 13% of the day would be occupied by lunch and recess. The school district's proposal would require Lydia to go in and out of the regular classroom 27 times per week. It contained no provision for support in the regular classroom, nor did it state how the regular first grade program would be modified so that Lydia could work on her own IEP goals and objectives in the regular classroom. Thus, Lydia's IEP goals were not addressed in the regular class and the instruction in the regular class was not modified for her. No aide was present in the regular class to assist her although an aide was available when she was in the learning support class.

17. The Gaskins alleged at the hearing that the district had violated Lydia's rights under Pennsylvania law, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the IDEA including both 20 U.S.C. § 1412(5)(b) (the integration requirement of the Act) and 20 U.S.C. §§ 1413(a)(3) and 1414(a)(1)(C)(i) (the comprehensive personnel development requirement). During the hearing, the hearing officer refused to consider the Gaskins' claim that the school district had failed to carry out its duty to train its personnel as required by 20 U.S.C. §§ 1413(a)(3) and 1414(a)(1)(C)(i).

18. On April 16, 1992, the hearing officer ordered that Lydia remain in the learning support class to the extent proposed by the school district with the exception of Lydia's physical education, which he found she could receive with regular first graders. The hearing officer did not reach the Gaskins' claims under Section 504 or the ADA, claiming that those claims were "identical" to their claims under the IDEA and state law.

19. The Gaskins appealed to the Special Education Appeals Panel which, in a decision on June 19, 1992, affirmed the hearing officer. In essence, the Panel held that Lydia's full inclusion in regular class was inappropriate because she would not be able to master the regular academic curriculum. In rejecting the evidence presented by the Gaskins that supplementary aids and services, including a modified curriculum, would enable Lydia to meet her educational goals within the matrix of the regular class, the Panel looked not to Lydia's educational needs but to the integrity of the regular education curriculum:

What concerns this Panel, and what we do not believe served Lydia's interests at all, is that the specific supplementary aids and curriculum modifications desired by the parents would lead to Lydia being included only in a physical sensewe do not agree that the type of program growing out of [the modifications suggested by the parents] would result in "inclusive" education in its intended sense. Even though it is beyond question that education for Lydia is not the same as it may be for her nonhandicapped peers, we believe that evaluation of these supplementary aids and modifications must consider the realization that there are still academic purposes to regular education. Those purposes have a place in deciding whether inclusion is appropriate for a particular child in individual subject areas, since presumably they are part of the benefit that is to be obtained from being "included" in regular education.

Pennsylvania Special Education Appeals Panel Opinion No. 565-A at 15-16. In so holding, the Appeals Panel did not inquire whether Lydia could benefit from being educated in the regular class with supplementary aids and services by accomplishing her own educational goals; rather, it assumed that even if she could meet the goals in her own IEP in the regular class, inclusion would still be inappropriate as long as she was not achieving the same academic benefit as the "regular" students.

20. On many occasions, beginning in 1991, the Gaskins have asked the CASD Superintendent and Board to provide a program of inclusive education for Lydia, that the district engage the help of an integration specialist and hire an Instructional Support Teacher (IST) to facilitate the inclusion of children with special learning needs, including Lydia, in regular classes. Instructional support is a program required of each school district in Pennsylvania in which specially training teachers may provide "consultation, technical assistance and training to the teachers and parents of identified students" in regular classes. 22 PA. CODE 342.24(d). The school district has taken the position that instructional support is available only for regular education students, and that it is inappropriate to use an instructional support teacher to facilitate the inclusion of a child who has been identified as exceptional. In any case, the district has not made an instructional support teacher available to any students in Lydia's school building.

21. As part of its Quality Education Initiatives project, PDE has developed GATEWAYS (Gaining Access To an Education With All Youth and Students), a model program for the inclusion of students with significant disabilities into regular schools and classes. Schools participating in GATEWAYS receive training in inclusion and

best practices for students with significant disabilities, assistance from Statewide Support Initiative consultants in developing an action plan for inclusion and frequent on-site technical assistance from experts provided by PDE. GATEWAYS enables schools to train special and regular education teachers in practices that lead to successful integration including the delivery of specialized services in regular classrooms, consultation between regular and special education, modification of educational materials, the use of classroom aides, peer tutoring, and the development of friendships and social networks for students with disabilities.

22. However, participation in GATEWAYS is voluntary--school districts must apply for a grant from PDE--and PDE makes only a limited number of GATEWAYS grants available each year. CASD has elected not to apply for a GATEWAYS grant.

23. Although several special education teachers from CASD attended a workshop on inclusion that was sponsored by the local intermediate unit, this was not a training program but simply an overview of inclusion. CASD has not required regular education teachers to receive training in the provision of supplementary aids and services in their classes to children with disabilities.

24. Since the Appeals Panel decision, the Gaskins have continued to ask for full inclusion for Lydia at each annual IEP meeting. They have also asked the district to obtain training and technical assistance to facilitate Lydia's inclusion, including the assistance of an instructional support teacher and a GATEWAYS grant. After learning that training and technical assistance was available from Temple University in the Adaptive Learning Environments Model (ALEM), a highly successful method for including

children with disabilities in regular classes, and that Temple staff were willing to train CASD staff in ALEM, the Gaskins asked CASD to consider Temple as a source of assistance as well, but the district declined to do so.

25. Despite the Gaskins' persistent advocacy, the district has not agreed to full inclusion for Lydia, nor has it agreed to obtain the training and technical assistance its teacher, particularly its regular education teachers, need to learn how to include Lydia. Lydia's IEP for 1993-94 specified that she would be removed from regular class up to 40% of the time. Lydia's IEP for 1994-95 fails to specify the extent of her participation in regular class. The IEP provides that she will be removed from the regular class for math, reading and language arts and leaves the amount of her removal from language arts class to the discretion of her teachers. District representatives at the IEP meeting said they would "try" to include Lydia for some part of language arts but they would not commit to what part and for how much time.

26. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Lydia Gaskin her right to receive a free appropriate education in regular classes with supplementary aids and services.

27. JOHN FORTE is eighteen years old and lives with his parents, Daniel and Michaelene Forte, in Bensalem, Pennsylvania. John has significant learning disabilities including severe dyslexia. He is a student in the Bensalem Township School District (BTSD), where in the acquisition of academic skills he has lagged far behind his superior intellectual potential.

28. John was first identified as an exceptional student in 1982, when he was attended the Neshaminy School District. He was

classified as "brain injured" and placed in an approved private school, the Summit School. In 1983, he was transferred to the Wordsworth Academy, another approved private school, where he remained until 1988. Wordsworth was a school for children classified as brain injured or socially and emotionally disturbed. All but one of the students there was male; the atmosphere was like that of a detention center. John was educated with children who were disturbed, aggressive or absorbed in self-stimulation. Students at Wordsworth were frequently restrained or placed in time-out boxes. Students used drugs on school outings. John could not understand why he was there and became withdrawn and confused.

29. Wordsworth failed completely to address John's dyslexia and inability to read. Instead of instruction in primary reading skills, he was made to read the same paragraph over and over again, or to write the same sentence--"I will ignore the immature behavior of others"--over and over. He made virtually no educational progress at all in the time he was there.

30. In November, 1988, John's parents asked that BTSD remove him from Wordsworth because the program was extremely inappropriate and because John expressed such unhappiness and anxiety about attending the school. The school district agreed to place John in a regular school building operated by the district. The district placed John in a learning disabilities (now called learning support) class in a district middle school.

31. In a class of twelve exceptional students with very diverse needs, John's special education teacher was unable to individualize the classroom instruction to John's specific learning disabilities. John's primary reading disorder--a specific learning disability in word attack or word decoding skills--was not

addressed. Rather, the students were all given a standard reading program. The students were not achieving on grade level, the curricular expectations were lowered, and the program was geared toward the lowest common denominator.

32. John was depressed and angry because of the wasted years he had spent at Wordsworth. His parents asked that he receive psychotherapy as a related service but the school district refused, not because John did not need it but because BTSD had a policy of not providing psychotherapy to any student who was not in an approved private school.

33. John's parents twice took the school district to due process over the services he needed, but was not provided, while he was a student in the learning support class. In the first proceeding, in 1989, the hearing officer ordered the school district to provide a specialized reading program to remediate John's difficulty with word attack skills. The program could be delivered by an instructional aide for two twenty-minute periods three times a week; however, the district did not consistently implement the program and John's difficulties with reading persisted. At the time of the hearing, when John was thirteen, his word attack skills were on a first grade level; at the time of his most recent testing, he had progressed only to a third grade level.

34. John's parents requested the second due process hearing to obtain psychotherapy for him. The Special Education Appeals Panel found that John needed that service, and, for the second time in an administrative opinion at the state level, found that Bensalem's policy and practice to refusing of provide psychotherapy to students enrolled in the regular schools of the district violated the IDEA. BTSD had followed this categorical policy for many years

without corrective action by PDE.

35. John refused to remain in the learning support class for ninth grade because he wanted to be educated in a regular class. His parents supported him and requested regular classroom placement. The school district refused, telling John's parents that they were "making a guinea pig" of their son and that district personnel could not adapt the instruction and curriculum for him. The Fortes removed John from BTSD and enrolled him in a parochial school in Lawrenceville, New Jersey, which they chose because it had a remedial program.

36. John spent ninth and tenth grade and part of the eleventh grade in parochial school. At the school in New Jersey, John was not eligible for any supportive special education services, including psychology, because he was not a New Jersey resident. For this reason, his parents transferred him to another parochial school in Fairless Hills, Pennsylvania, which was unable to provide the supplementary aids and services John needed. In the fall of 1993, the Fortes re-enrolled John in the Bensalem Township School District and insisted that he be educated in regular classes.

37. When John re-enrolled in BTSD, the district refused to develop an IEP for him because he wanted to be in regular classes. The school guidance counselor informed John's parents that he "belonged in special education" and that the teachers could not adapt for him in the regular classes. John's mother insisted that the school district develop a new IEP and that they use his last IEP from eighth grade until a new one was completed. However, the district did not develop a new IEP until the spring of 1994.

38. John was provided with no supplementary aids and services in the regular classroom and his regular education teachers did not

even know he was a special education student. He was embarrassed and made fun of in class. He began cutting English class after the teacher humiliated him for his reading performance. In February, 1994, he was excluded from school and placed on homebound instruction after threatening the English teacher who had repeatedly humiliated him. He returned to school in April, 1994. While he was out of school, he received a total of one hour of homebound instruction until the last two weeks of his exclusion, when the district offered him tutoring provided by a private agency under contract with the district.

39. After the February incident the district agree to develop an IEP for John containing adaptations of the regular classroom instruction and materials, including extra time for completing reading assignments, extra time for test-taking and an opportunity to go back over the test, the use of a spell-checker in English class, the use of a calculator in math, frequent short quizzes and behavioral support emphasizing positive approaches. However, the adaptations have not been provided. Regular education teachers say it is "not in my job description" to adapt instruction for a special education student. The math teacher refused to sign the IEP or take the list of adaptations that was handed to her by the school district; she said that John was being "dumped" on her.

40. On the April IEP, the private tutoring service was listed as John's special education. However, the service was neither able nor qualified to provide special education or to adapt John's regular classroom work for him. Instead, they gave him books to read that are designed for third graders.

41. After it became clear that the tutoring service could not meet John's needs, the district assigned him to a resource room,

where he was supposed to receive assistance with his work for one or two periods a day. The resource room teacher's job description was that of a monitor, not a special education teacher. He had sixteen students with physical and learning disabilities who came to the resource room to do their classroom assignments. The teacher was overwhelmed with the diverse needs of these students and had neither the training nor the time to teach John. At a meeting in June with the resource room teacher, John's mother learned that he had never seen John's IEP. When she asked that he provide John with the specialized instruction he needed to complete his assignments in regular classes, he refused.

42. In June, 1994, John's mother attended IEP conferences with the school district to develop an Individualized Education Program that would provide the supplementary aids and services John needs to succeed in the regular class. However, the teachers told John's mother that they were unable to adapt for John because they had too many students in their classes. The IEP team agreed with John's mother that the adaptations promised for him in the past have not been provided. The vice-principal of the school stated that he could not make the regular education teachers adapt instruction for John if they were unwilling to do so. When John's advocate suggested a program of specialized reading instruction, Orton-Gillingham, which must be implemented by a trained teacher, the district responded that there was no one at the school who was trained to use a reading program with John.

43. John ended the 1993-94 school year by failing several classes. He is an intelligent student with high potential that has been squandered by educational neglect. Because of his failure in school and his inability to read, his wasted years in special

education settings and his experience being treated as a "stupid" student in regular education, John is depressed and angry. The harm he has suffered may be life-long.

44. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied John Forte his right to receive a free appropriate education in regular classes with supplementary aids and services.

45. HASSAN ADIB SABREE is fourteen years old and lives with his mother, Hana Sabree, in Philadelphia, Pennsylvania. Hassan has Down Syndrome and is a student in ninth grade at Roxborough High School in the Philadelphia School District, where he is placed in a life skills support class.

46. For his entire school career, the school district has never offered Hassan the opportunity to be a member of a classroom with nondisabled students. The Philadelphia School District has placed Hassan in five different public schools. He was placed in a full-time Trainable Mentally Retarded class at F.S. Edmond's Elementary School from 1984-87; from 1987-90 he attended Emlen Elementary School; in the school year 1990-91, he attended Jenks Middle School; from 1991-93, he attended Hills Middle School; and he presently attends Roxborough High School in a full-time life skills support class.

47. In these self-contained classes, Hassan has been denied an opportunity to learn effective academic skills. His reading instruction has focused on teaching him to read sight words in isolation, rather than mastery of a functional reading curriculum. He has not been taught to learn to write, perform mathematical calculations or to use money. Each attempt by his mother to make these skills a part of his education has been met with resistance

by the school district.

48. Hassan was denied any opportunity to be educated with nondisabled students until sixth grade, when, at his mother's insistence, a provision was included in his IEP requiring that he participate in regular physical education class twice per week. Upon Hassan's graduation from elementary school and his entry into Jenks Middle School, however, his participation in regular physical education was reduced to once a week. The next year, after Hassan was moved to Hill Middle School, all integration stopped and Hassan was placed in a life skills class at Hill in a separate section of the building from nondisabled students. Students in the Life Skills class even ate lunch at their own table within the cafeteria.

49. Hassan graduated from Hill Middle School in 1993 and entered Roxborough High School, the school he presently attends. In January 1994, at his mother's insistence, Hassan was integrated into a regular computer lab. However, he receives no support services during the lab time to enable him to fully participate. No IEP goals have been drafted that pertain to his work in the computer lab; no curriculum adaptations have been made; the teacher has received no training in how to teach Hassan or other students with intellectual disabilities. As a result, Hassan is denied an opportunity to participate in and benefit from the computer lab that is as effective as the opportunity provided the other students.

50. At Roxborough High School, Hassan's mother asked that he be included in extracurricular activities. The school consistently has refused, often with transparent excuses. For example, when Ms. Sabree requested that Hassan participate in the color guard, she was told he should participate in Special Olympics instead; when

she asked that he be allowed to participate as a towel boy in sports, she was told he could not because the games lasted too late at night, he would have to cross the street to get to the football field and only girls were assigned to give out the towels for football and basketball.

51. In January 1994, a meeting was held to develop an IEP and a transition plan for Hassan. The Philadelphia School District recommended that Hassan's placement be changed to the Industrial Production program at the Randolph Skills Center, a completely segregated program that offers no opportunity for interaction with nondisabled children. The program does not allow students to explore jobs that meet their interests and tracks disabled students into segregated and sheltered employment opportunities.

52. Throughout his entire school career, Hassan had little opportunity to model the behavior of age-appropriate nondisabled peers. In fact, he has lost appropriate behaviors his mother instills in him at home. Recently, Hasan has begun to mimic the behavior of another classmate by grinding his teeth, making strange noises, and letting his tongue hang out of his mouth.

53. In order to give Hassan the opportunity to be with nondisabled peers and to access an appropriate educational program, Hassan's mother has spent enormous energy in utilizing community resources outside of the educational system and working with him on developing functional academic and life skills. She has taught him to work on a computer, to use public transportation, use money, shop on his own, his own clothes, pay his way at movies, recite identifying information and his social security number, buy the newspaper, wash and dry his clothes at the laundromat, and shop at the supermarket. Since he was five years old, Hassan has

participated in typical camp programs through the YMCA and Boys' Club of Philadelphia. He was fully included in the Rites of Passage program, a Saturday program at Temple University that teaches school-age children about African history and becoming a responsible member of one's community.

54. Ms. Sabree wants Hassan to have the opportunity to participate and learn with his nondisabled peers. She wants Hassan to have supplementary aids and services available to him so that he can benefit from inclusion in a regular education classroom and from extracurricular activities.

55. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Hassan Sabree his right to receive a free appropriate education in regular classes with supplementary aids and services.

56. MERRIN RAINEY is fourteen years old and lives with her parents, Thomas and Linda Rainey, in Fairview, Pennsylvania. Merrin has mild mental retardation and severe motor and language disabilities. Merrin has been misdiagnosed as moderately retarded because of her significant language disability, and at times her difficulty performing motor tasks and language skills has led to the development of behavior problems. Merrin is a student in the Fairview School District, where she is placed in a self-contained learning support class for her academic subjects with integration into regular class for science, social studies and specials.

57. Merrin began her schooling as a preschool student in an early childhood program operated by the Northwest Tri-County Intermediate Unit ("IU 5"). She was classified by the IU as "trainable mentally retarded" (TMR). When Merrin reached school age, she was placed by the IU in a self-contained classroom for

children labelled TMR operated by the IU but located at the Chestnut Elementary School in her home school district. The placement decision was made by matching Merrin's classification, based on her scores on an IQ test and a test of adaptive behavior, to a classroom with the corresponding label. The IU psychologist recommended the TMR placement on the ground that "Given her mental age and her present social functioning it would probably be in Merrin's best interest if she were serviced through the Trainably Mentally Retarded classroom" and suggested that eventually "Merrin could gain enough skills to go into an Educable Mentally Retarded setting." Merrin's IEP team did not inquire then, nor have her IEP teams inquired since, whether the services to help Merrin develop these skills could be provided in a regular class with supplementary aids and services.

58. In 1987, Merrin's parents, frustrated with the low expectations and lack of opportunity for learning in the TMR classroom, requested a due process hearing on the issue of Merrin's educational classification. They prevailed and in early 1988 Merrin's classification was changed to "educable mentally retarded" (EMR). The hearing officer directed that Merrin be placed in a combined mixed-category (EMR/LD) and TMR program with some time spent in regular education. Following the hearing officer's decision, the district and intermediate unit proposed several times to transfer Merrin to another school district. Merrin's parents successfully resisted the proposed transfers in a complaint filed with the United States Department of Education and in two additional due process hearings.

59. In the mixed-category/TMR program, Merrin had an IEP providing that she would receive art and music instruction in a

regular class. Instead, her instruction in these subjects was provided by regular education teachers within the TMR classroom. The Rainey's filed a complaint with PDE seeking enforcement of the provisions in Merrin's IEP and were told that PDE policy allowed regular education teachers to deliver a regular curriculum to children with disabilities without the opportunity for integration with non-disabled children provided the parents were informed of that in writing. PDE ruled in April, 1989 that Merrin's placement for art and music was improper, but only because the Rainey's had not been informed of it in writing.

60. After the third due process hearing decision in 1991, the Rainey's asked the school district and intermediate unit to include Merrin as much as possible in regular class with supplementary aids and services. When Merrin's needs are met, and when she is provided with appropriate instruction including multisensory techniques, manipulatives and behavioral support, she does not display frustration or difficult behavior. However, the district and the intermediate unit have resisted even a limited amount of inclusion for Merrin. It was not until Merrin's last IEP meeting, in September, 1993, that the district and intermediate unit agreed to include Merrin in regular education for science and social studies, and inclusion in these subjects was not in fact implemented until January, 1994. Merrin's mother also asked at the IEP meeting for Merrin's inclusion in regular English class, but the district refused.

61. Lack of teacher training has been an enormous obstacle to Merrin's successful inclusion. Merrin's teachers have refused to be trained in techniques for implementing her IEP in a regular classroom--they say it is "not part of their job description." Nor

have the regular teachers been trained in the behavior management techniques listed on Merrin's IEP. Instead, a gym teacher who was unfamiliar with the behavior management plan in Merrin's IEP and failed to follow the plan when Merrin had a behavioral episode filed criminal charges against Merrin (the charges were dismissed).

62. Merrin has had many negative experiences with non-disabled peers that, in turn, have led to behavioral difficulties. Those experiences include teasing, baiting and making fun of Merrin and refusing to sit next to her. Beginning in September, 1992 and on at least six occasions thereafter, the Rainey's asked the district and PDE to help Merrin develop better peer relationships through a widely used and highly successful technique for developing friendships between disabled and non-disabled students called "Circle of Friends." However, neither PDE nor the Intermediate Unit was able to provide training and technical assistance in Circle of Friends or a similar approach. Finally, Mrs. Rainey offered to provide the training herself; the district agreed to let her do this only in May, 1993, and then would only permit her to offer a class for volunteer attendees after school. The teachers were not paid or given release time to attend the training, and only one staff member, a special education teacher, attended, and then for only half the session.

63. The Rainey's have repeatedly asked PDE to provide teacher training and technical assistance to Fairview School District to facilitate the inclusion of Merrin and other students with disabilities, and at times the school district has joined their request, but that assistance has not been forthcoming. For the last several years the school district has applied for a GATEWAYS grant, but its applications have been denied. On several occasions, for

example at a pre-hearing conference in November, 1992, the school district agreed to request technical assistance in behavioral support and curriculum and instructional modifications from PDE, but PDE was unable to provide the assistance requested in a timely fashion. At a planning meeting for Merrin in January, 1993, a PDE consultant agreed to provide technical assistance in curriculum modification, but failed to return to the district for a year and a half.

64. Merrin has been assigned a special education teacher to assist with her inclusion in regular classes, but instead of facilitating her inclusion the teacher follows her everywhere and does everything for her, inducing dependency on Merrin's part, hindering her integration into the class and preventing the development of peer relationships and social skills.

65. At Merrin's last IEP conference in September, 1993, her mother asked for supplementary aids and services to facilitate Merrin's inclusion in the regular class including taped textbooks, curriculum materials on Merrin's reading level, assistive technology, teaching Merrin keyboarding skills, inservice training in modifying the regular curriculum, disability awareness, Circle of Friends and co-teaching by regular and special education teachers. To avoid a due process hearing, the district agreed to try to address all these needs, but none of the requested aids and services were provided except for a small amount of instruction in keyboarding, which was not sufficient to teach Merrin how to use a computer.

66. Merrin has been denied a meaningful opportunity to participate in nonacademic and extracurricular activities at her school. Last year, Merrin had a peer support program to enable her

to eat lunch twice a week with regular education students; the program was supposed to continue this year but it was dropped. At the September, 1993 IEP meeting, Merrin's mother asked that Merrin be included in extracurricular activities including the soccer team, school newspaper and yearbook. Merrin was allowed to join the soccer team, but received no support at all and dropped out in frustration. Teachers and coaches who direct or chaperon extracurricular activities refuse to provide reasonable modification for Merrin.

67. Merrin's placement in an IU-operated learning support class for "academic" subjects, rather than a district-operated class, presents an additional barrier to inclusion. The IU has no incentive to encourage or facilitate Merrin's inclusion in regular district-operated classes because that would mean the loss of Merrin as an IU student. Further, the fact that IU teachers are not district employees but report to a different chain of command discourages collaboration between district teachers and IU teachers. Regular education teachers feel no obligation to implement portions of Merrin's IEP that were developed by IU personnel and indeed, may not even be aware of them, like the gym teacher who was unfamiliar with Merrin's behavior management program.

68. Merrin has made little progress academically in special education classes because IU programs are not individualized--for example, all students in IU learning support classes, including Merrin's class, receive the same basal reading program. This program is inappropriate for Merrin because of her severe language disability. Merrin wasted years in this program and remained at the first grade level in reading for five of the last six years.

Although Merrin is fourteen, she has no plan for her transition from school to adult life.

69. The Rainey's would like Merrin to be more included in her school and community but the school district has refused to make a commitment to inclusion for Merrin or to provide her with the accommodation and support she needs in the regular class because of the large investment in staff training that would be required. As a result, Merrin has experienced harm including loss of potential, lack of friends, loss of social relationships with peers, and stigmatization.

70. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Merrin Rainey her right to receive a free appropriate education in regular classes with supplementary aids and services.

71. SAMUEL LUCKINBILL is fourteen years old and lives with his parents, Thomas and Wendy Luckinbill, in Womelsdorf, Pennsylvania. Samuel is a gifted student with severe learning disabilities, attention deficit disorder (ADD) and fine and gross motor difficulties. He was an eighth grade student in the Conrad Weiser Area School District until his parents withdrew him from school in October, 1993.

72. Sam's intellectual gifts include exceptional reasoning aptitude and ability to think creatively and abstractly. He is able to see relationships and think conceptually at a very high level. However, his learning disabilities significantly affect his educational performance. Because of the combination of giftedness and severe learning disabilities, Sam's scores on the subparts of standardized tests range from the 2nd percentile to the 99th percentile. He has sequential processing difficulties which, in

combination with his attention deficit disorder, cause great difficulty breaking down a task into its component parts, figuring out how to begin working on it, and organizing a response. In school, he has extreme difficulty producing written work. As is common among students with ADD and severe learning disabilities, anxiety, avoidance, confusion and anger arising from poor performance compound Sam's academic problems.

73. Sam had symptoms of ADD, learning disability and high intelligence from early childhood. He had difficulty with school from the beginning; he was diagnosed as having ADD by a neurologist at the age of eight. In third grade, Sam enrolled in the Conrad Weiser Area School District and his learning disability was diagnosed by a psychologist at the Hershey Medical Center. In response to this evaluation, the district conducted an MDE and found Sam to be nonexceptional but offered him gifted services. Sam's parents withdrew him from school because the district offered no services for his learning disabilities and ADD but took the position that Sam would have to meet all regular and gifted class expectations. The Luckinbills homeschooled Sam for six months.

74. When Sam re-enrolled in the school district six months later, the district placed him in fifth grade. The district conducted an MDE and recommended that he be placed in a gifted program; however, he was offered no supplementary aids and services for his learning disabilities and ADD. Sam's parents contested the school district's refusal in a due process hearing.

75. Although the school district prevailed at the due process hearing, the Special Education Appeals Panel reversed the hearing officer and found that Sam did have a specific learning disability in the area of written instruction. The school district appealed

the decision to Pennsylvania Commonwealth Court, which on February 10, 1992, upheld the Appeals Panel and ordered the school district to conduct a new multidisciplinary evaluation and develop an appropriate IEP for Sam that addressed both his giftedness and his specific learning disabilities. However, the school district did not implement the Commonwealth Court's order to conduct a new multidisciplinary evaluation. Instead, it developed an IEP based on the MDE that had been conducted before the Commonwealth Court action.

76. After the Luckinbills sought mediation, the school district agreed to provide supplementary aids and services including a word processor, modified testing and instructional materials, class notes, and regular team meetings between special and regular education teachers, staff and Sam's parents.

77. Even after Sam was identified as a student with giftedness and learning disabilities, his teachers failed to provide him with specialized instruction and other supplementary aids and services in the regular class. Instead, Sam's regular teachers punished him for not completing the regular classroom assignments. They begrudged him any adaptation, refused to individualize instruction for him and expressed the view that Sam should be able to do the regular classroom work without modification.

78. Because district staff were not adequately trained to provide supplementary aids and services to a student with Sam's learning needs, Sam's educational program remained inappropriate and ineffective. Rather than modify the instruction and materials for Sam, his teachers simply lowered the classroom expectations as they apply to him. For example, when other students in the class were working on a writing assignment, the teacher let Sam sit idle

without doing anything. Sam's teachers did not know what Sam was capable of and what to expect from him.

79. There was little collaboration and coordination between Sam's regular education and special education teachers. For example, Sam was supposed to use a computer for math assignments, but the regular mathematics did not know how Sam was supposed to use the computer and did not ask. The learning support teacher who was assigned responsibility for modifying Sam's homework did not confer with the regular education teacher to establish what the expected outcomes were for the homework. At least one of Sam's teachers flatly refused to modify written tests for him.

80. The Luckinbills asked that Sam be provided with a laptop computer to assist with written assignments. In response, the district applied for an assistive technology grant to purchase a computer with a voice activator. However, although the district purchased and received the device, it was not made available to Sam because his teachers never obtained the necessary training in how to use the device.

81. Sam continued to fail in school and fell farther and father behind. In April, 1993, Dr. Carol Mills, a psychologist from Johns Hopkins University, evaluated Sam and concluded that he could not receive an appropriate education in the Conrad Weiser Area School District. Nevertheless the Luckinbills continued to try to work with the school district. In the summer of 1993, the district conducted a new MDE and held an IEP conference. The Luckinbills asked that an outside psychologist with a strong understanding of Sam's combination of needs consult with the school district on a monthly basis for the purpose of integrating the psychologist's recommendations into the regular classroom activity. The school

district refused.

82. Finally, in August, 1993, the Luckinbills requested a due process hearing on the issue whether Sam was receiving a free appropriate public education in the least restrictive environment. In October, 1993, after unsuccessfully trying to work with the school district, the Luckinbills withdrew Sam from school. On April 9, 1994, the hearing officer ruled that the IEP offered to Sam and his parents in August, 1993 was "appropriate at the time it was offered." The hearing officer ordered some prospective relief for the 1994-95 school year should Sam re-enroll in the district; however, those orders, for example "staff orientation and training will be provided on an as needed basis for those individuals working with Samuel" were vague and unenforceable.

83. As a result of the Luckinbills' struggle to obtain an appropriate education for their son, relations between the Luckinbills and the school district have broken down. Sam has been greatly harmed and his future compromised. As a psychologist who evaluated Sam in 1992 wrote, "Sam's difficulties in school have been going on for so long now that unraveling the complexity of his situation and helping him to achieve in school and life will take a concerted, sustained, and coordinated effort on the part of everyone in Sam's life."

84. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Samuel Luckinbill his right to receive a free appropriate education in regular classes with supplementary aids and services.

85. LISA McCANN is nine years old and lives with her mother, Lisa McCann, in Denver, Pennsylvania. Lisa is labelled severely retarded and sometimes displays challenging behaviors. The Cocalico

School District, where she lives, is responsible for her education; however, she is currently placed in a multiply handicapped support class operated by Intermediate Unit 13, in another school district that is approximately a 45 minute bus ride each way. Her home base school, Reamstown Elementary, is only a short walk from her home and Lisa's mother believes that Lisa would benefit greatly from being educated close to home with peers from her neighborhood. Lisa's mother wants her to receive a meaningful, functional education with supplementary aids and services in the regular class to the maximum extent appropriate.

86. Lisa's mother has had great difficulty persuading the district to provide appropriate support and related services to Lisa even in her present program, in which she spends most of her time in special education. The long bus ride is stressful for Lisa, who has difficulty sitting still and must be strapped to her seat. The bus ride exacerbates Lisa's challenging behavior and her tendency toward self-abuse.

87. Beginning in the school year 1990-91, at her mother's request, Lisa has attended regular class for 20 to 45 minutes a day accompanied by her special education teacher or other special education staff. The only supplementary service provided by the school district during Lisa's time in regular class is the support of the special education personnel who accompany her.

88. In the regular classroom, Lisa's special education teacher is responsible for "managing" her with one on one attention and redirection. Little or no attention has been given by the school district to alternatives such as modifying the activities in the regular class to be more appropriate for Lisa, or technical assistance by an inclusion specialist. The special education

teacher did not feel it was appropriate for her to make suggestions about Lisa to the regular education teacher since it was not her classroom. The former kindergarten teacher testified that she did not participate in Lisa's IEP meeting.

89. In 1993, at the request of Lisa's mother, a due process hearing was held in the Cocalico School District to determine whether Lisa could be educated at her home school and whether she was integrated with non-disabled students to the maximum extent appropriate. At the due process hearing, the parent's expert witnesses testified that Lisa could be educated for at least half a day in the regular class, and that education in the regular classroom with supplementary aids and services would afford academic and non-academic benefits to Lisa and could be effected successfully with supplementary aids and services including teamwork between regular and special education, staff training and technical assistance from specialists in inclusion, behavior management, assistance with communication and physical assistance.

90. The hearing officer ordered the school district to develop a program for Lisa at Reamstown Elementary School; however, his decision was reversed on appeal by the Special Education Appeals Panel.

91. The hearing officer ordered the school district to include Lisa in regular class for three periods of 30 minutes each per day. In reaching his decision that this was the appropriate amount of inclusion for Lisa, the hearing officer did not consider whether supplementary aids and services would enable Lisa to be educated in a regular class to the extent advocated by the parents.

92. The school district and intermediate unit point to Lisa's distractibility and challenging behavior as reasons why she cannot

spend more time in a regular class; however, they have failed to provide Lisa with an appropriate program of positive behavior management despite her mother's numerous requests. Instead, when Lisa bites and pinches herself, school personnel call her mother and ask what to do.

93. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Lisa McCann her right to receive a free appropriate education in regular classes with supplementary aids and services.

94. ELIZABETH MOSER is seven years old and lives with her mother Giovanna Moser in Lebanon, Pennsylvania. Elizabeth has Down Syndrome and is a student in the Lebanon School District.

95. Elizabeth began her schooling in the Lebanon United Cerebral Palsy Preschool Program in infancy and subsequently was placed in the Preschool Special Education Program operated by Intermediate Unit 13 in September, 1991. At her mother's request, when Elizabeth reached kindergarten age she was enrolled in a regular kindergarten, although the IU rather than the Lebanon School District continued to assume responsibility for her education and her educational plan was an IU-generated IEP. She was also enrolled in a kindergarten-level special education "diagnostic" classroom but was to be there only between the time between her arrival at school and when kindergarten class began, or when the kindergarten class was not in session. Elizabeth received no supplementary aids and services in the regular kindergarten class, although she received the related services of speech and language.

96. Elizabeth's multidisciplinary team evaluation conducted by the IU in April, 1993, found that "the relatively higher

developmental level of instructional activities [and] the lower staff-to-pupil ratio in kindergarten has seemed to cause an inordinate amount of academically non-engaged time for Beth." Nevertheless, the team agreed with Elizabeth's mother that she had made progress in the regular kindergarten and was able to follow the classroom routine.

97. Despite the progress Elizabeth had made in the regular kindergarten even without supplementary aids and services, the IU multidisciplinary and IEP teams recommended that she be placed for first grade in a fulltime self-contained special education classroom. The team offered no rationale for Elizabeth's removal from regular class other than a need for a "low teacher-student ratio to focus on communication, academic, socialization and fine motor skills." Elizabeth's mother rejected the proposed placement and requested a due process hearing.

98. As the hearing date drew near in August, 1993 and Elizabeth's mother retained an attorney, the IU and school district made a settlement offer to develop a program of inclusion for Elizabeth with the support of an aide. The school district agreed that Elizabeth's primary assignment would be the first grade class.

99. When Elizabeth started school in the fall of 1993 in the Lebanon School District, the district had not yet hired an aide. The regular education teacher made clear to Elizabeth's mother that she did not want her in her class. The teacher had no training in inclusion and asked Ms. Moser why she wanted Elizabeth in the regular class when "she isn't grasping anything." The teacher also was untrained in behavior management and did not know how to cope with Elizabeth's occasional challenging behavior. The district finally hired a full-time aide for Elizabeth but the aide left

almost immediately.

100. The district asked Ms. Moser to agree to let Elizabeth go to an Intermediate Unit special education classroom for reading and math because their teachers did not have the training required to include Elizabeth in regular class for academic subjects. The district promised a target date of January, 1994, to include Elizabeth full time in regular education. Elizabeth's mother agreed to her temporary placement in a separate special education class for part of the day because she believed, based on her past experience with the IU and school district, that district personnel were not trained in methods and techniques of inclusion and that they would not be able to provide the supplementary aids and services Elizabeth needed without that training.

101. The district's decision to place Elizabeth in the IU class for her academic subjects was not based on her IEP since her 1993-94 IEP had not been developed yet. On September 16, 1993, the school district developed an IEP for Elizabeth defining her program as "supplemental intervention in the regular classroom." The IEP also committed the school district to "Implement Gateway inclusion practices with consultation of support staff to Elizabeth's program and assignment." Despite the placement stated on the IEP, Elizabeth's placement was in reality not "supplemental intervention in the regular class" but approximately half time in a special education class.

102. By November, 1993, it became clear that the school district was unable to phase in a program of full inclusion by January, 1994. As the school year went on, the district was unable to include Elizabeth for additional subjects and she remained in the separate special education class for approximately half of her

school day. In February, 1994, the district gave Ms. Moser a Notice of Recommended Assignment (NORA) assigning Elizabeth half-time to a regular class and half-time to a learning support class. An IU special education teacher, not a district teacher, had responsibility with the principal for seeing that Elizabeth's IEP is implemented. In the second half of the year, Elizabeth ceased to have recess with her first grade classmates but went to recess with the other IU students.

103. Elizabeth appears to be happy in the regular class and successfully follows the class routine. However, her mother is concerned that her academic skills are not developing as they should and fears that her IEP has not been implemented in the regular class and that the curriculum has not been adapted for her. Although Elizabeth needs behavioral support, the school district has failed to provide that service, and Ms. Moser pays for behavioral support privately. The principal of Elizabeth's school has acknowledged to Ms. Moser that the district does not have enough resources for training.

104. In June, 1994, the school district presented Ms. Moser with an IEP for the 1994-95 school year for Elizabeth that continues her placement half time in regular education and half time in a separate special education class. The district's justification was that many of the staff who were working with Elizabeth had left and the new staff would need to be trained to work with her. Ms. Moser asked that Elizabeth receive integrated speech and language therapy (that is, therapy that is integrated or incorporated into regular classroom activities and instruction), but the Intermediate Unit speech therapists refused to agree to the integrated therapy model, and Ms. Moser will pay a speech therapist

privately to work with Elizabeth and her classroom teacher.

105. The "target date" for Elizabeth's full inclusion is now fourth grade (1996-97). Ms. Moser wants full inclusion for Elizabeth, but she believes that she has no choice but to accept a half-and-half placement due to the district's lack of training and expertise in providing specialized instruction and other supplementary aids and services in the regular classroom.

106. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Elizabeth Moser her right to receive a free appropriate education in regular classes with supplementary aids and services.

107. ANNE CORR is ten years old and lives with her foster parents, Patrick and Judith Corr, in Pittsburgh, Pennsylvania. Anne has autism. She does not speak, but rather communicates with facilitated communication, yes and no gestures and signs. Anne is a student at Highcliff Elementary School in North Hill School District (NHSD).

108. Anne's early schooling consisted of a program for children with emotional problems and autism, followed by a program in a separate school in the Mt. Lebanon School District. In the segregated school, Anne gained little academically and she developed bizarre and challenging behavior. During the first year after she came to live with the Corrs in June, 1991, she remained at Mt. Lebanon; in the fall of 1992, at her parents' request, she entered the North Hills School District, where she was placed in a life skills classroom with six other children with significant disabilities.

109. The Corrs wanted Anne to be educated in the North Hills School District so that she could attend school with her brothers

and sisters. Their goal for Anne is inclusion, and North Hills not only is her home school district but a GATEWAYS site. At the Corrs' request, an IEP was developed for Anne in June, 1993, providing that Anne would be included 87% of the time in regular classes with supplementary aids and services, including collaborative team meetings every four to six weeks, behavior management and adaptations to the regular curriculum made by the special education teacher. Anne was also to be provided with assistive technology devices to enable her to communicate. A Statewide Support Initiative consultant was to provide technical assistance to Anne's team.

110. When school began in the fall, it soon became apparent to the Corrs that the North Hills staff working with Anne had not been trained to provide the supplementary aids and services in her IEP, that the collaborative team process was ineffective, and that the recommendations of the Statewide Support Initiative consultant were not implemented by school district personnel.

111. The Corrs and another family who had experienced similar problems contacted defendant Michelle DeSera and asked that she investigate the problems in integrating Life Skills students into regular classes at the North Hills School District and take corrective action. Ms. DeSera and the director of the GATEWAYS project made a site visit to the North Hills School District on October 4, 1993, and the GATEWAYS director transmitted a report and recommendations to the superintendent of the school district on November 30, 1993. The PDE team found that "not all staff in the buildings who work with students with disabilities are aware of and comfortable with ways to approach and communicate with these students"; that there was a need for training and guided practice

in assistive technology, positive approaches to challenging behavior and methods for accomplishing integration into regular classroom activities, including curriculum modification and adaptations; that there was a need for assistance in collaborative teaming and a need for better communication between teachers and parents. Noting that North Hills had been accepted as a GATEWAYS expansion site and had agreed to implement the GATEWAYS model with technical assistance and a minigrant provided by PDE, the team asked the district to respond to its recommendations by submitting goals and activities to the director of the GATEWAYS project.

112. The recommendations made by defendant DeSera and the GATEWAYS coordinator were not implemented, nor did PDE defendants take any action to ensure that the commitments made by the North Hills School District in exchange for its GATEWAYS grant were honored.

113. The principal of Highcliff Elementary School failed to ensure that Anne's teachers had release time for common planning, that the regular education teachers were trained in positive approaches to behavior management, and that regular education teachers were held accountable to deliver the supplementary aids and services in Anne's IEP. Although Anne's life skills teacher supported inclusion for Anne, the regular education teachers resisted collaboration with the special education teacher to modify the regular curriculum for Anne. Anne's positive behavior management plan was not implemented as it was written; instead, the regular fourth grade teacher simply removed Anne from the classroom when she exhibited challenging behavior. The team continued to meet but never considered how to modify the regular curriculum to meet Anne's academic needs because the team was so preoccupied with

administrative and "turf" issues.

114. Concluding that Anne was being harmed by the failure of the regular education staff to implement Anne's IEP and the recommendations of the GATEWAYS consultant, their negative attitudes toward Anne and their resistance to having her in a regular classroom, the Corrs removed Anne from regular education in March, 1994. She came back to school later that month with a revised schedule in which she was removed from the regular class during the academic portion of the day. Anne received instruction in reading and language arts in the life skills class. The location of this class--outside the double doors that lead to a school exit and isolated from the ebb and flow of school activities--enhances Anne's isolation, stigmatization and "difference."

115. A Comprehensive Evaluation Report (CER) held for Anne on March 30, 1994 recommended increased inclusion in the regular class for academics. On May 23, 1994, the GATEWAYS consultant to North Hills wrote to the principal of Highcliff informing him that, based on observation and written data collected by the Statewide Support Initiative consultant and school personnel, Anne's program had not been implemented consistently. AN IEP conference was held for Anne on June 10, 1994. The meeting broke up when the principal of Highcliff refused to agree to Anne's inclusion for reading and language arts, although Anne's CER had found that she was reading at grade level. When members of the team recommended co-teaching--having the regular fifth grade teacher and the life skills teacher teach the regular class as a team--the principal refused and stated that he would not agree to team teaching in his building.

116. At present, Anne has no agreed upon IEP for the 1994-95 school year and, based on her experience in 1993-94, even if an IEP

is developed providing for her inclusion to the maximum extent appropriate, her parents have little confidence that it will be implemented.

117. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Anne Corr her right to receive a free appropriate education in regular classes with supplementary aids and services.

118. BRETT MICHAEL KONESKI is seven years old and lives with his parents, James and Dawn Koneski, in Wilkes-Barre, Pennsylvania. Brett has Down Syndrome and is a kindergarten student in the Wilkes-Barre Area School District. Brett's parents chose to live in Wilkes-Barre because of the high quality of the district schools, and their dream was that Brett would attend his home school with his neighborhood peers.

119. As a young child, Brett received early intervention services and therapies, attended preschool and made great progress. By the fall of 1993, when he was six, he demonstrated virtually the same academic achievement as a typical beginning kindergarten student.

120. In May, 1993, Brett's parents asked the school district to educate him in regular kindergarten with support at his home school, Kistler Elementary, and the school district agreed. In September, 1993, the district assigned Brett to a new teacher who had never taught kindergarten before; unbeknownst to the Koneskis, the other kindergarten teachers had refused to have Brett in their class.

121. The school district promised to provide Brett with the supplementary aids and services he needed to succeed in regular class, including specially designed instruction and materials,

integrated therapies (physical and occupational therapy and speech and language) in the regular classroom, peer tutoring and regular team meetings.

122. Brett began school at Kistler Elementary School in September, 1993. It soon became apparent that none of the promised supplementary aids and services were in place. On Brett's first day of school, the vice-principal called his mother to come get him because of his "uncontrolled behavior." The following week, the Koneskis learned that the related services on Brett's IEP (occupational therapy and speech therapy) were not available. Soon after, they became aware that school personnel were regularly using four-point physical restraint with Brett, that is, restraining all four limbs at once. The Koneskis filed a complaint against the school district with PDE's Division of Compliance challenging the district's physical mistreatment of Brett and the use of restraints.

123. Soon after, at the Koneskis' request, a meeting was held to revise Brett's IEP. The revision stated that a written behavior management plan utilizing positive approaches would be developed for Brett; that all staff, including teachers, aide and related service personnel would be trained in the implementation of the plan; that the curriculum would be adapted for Brett; that the classroom aide would be trained to assure meaningful participation for Brett in all classroom activities; and that all school personnel working with Brett would receive training in inclusion, curriculum adaptation, disability awareness, positive approaches and integrated therapies. The school district agreed to request the necessary training from PDE.

124. The Koneskis withdrew the complaint they had filed with

PDE after the district requested technical assistance from PDE and PDE referred the school district to the Statewide Support Initiative-Early Childhood specialist in Intermediate Unit 18.

125. Despite the agreement between the district and the parents and the Koneskis' own persistent advocacy, the school district failed to implement Brett's IEP. The teacher and aide were unable to adapt assignments for Brett and implement his IEP in the regular classroom. In February, 1994, Brett's teacher reported that although Brett's behavior no longer was a problem, he was failing academically, he was not communicating with his peers, he was being humiliated in the classroom and the parents' insistence on his inclusion in regular class amounted to "child abuse." The teacher admitted that he was not in sympathy with inclusion of children with Brett's disabilities in regular classes and that he still did not know how to teach Brett. Also in February, the Koneskis learned that the aide assigned to Brett did not have a copy of his IEP.

126. District personnel were unable to deliver integrated therapies successfully and the Koneskis agreed reluctantly to allow the therapies to be delivered in a separate therapy room. On at least one occasion, Brett was left in a physical support classroom where he sat with nothing to do. Brett's teacher and aide continued to regard him as an outsider in the class, demonstrated little respect for his personhood or dignity, and failed to treat him as an equal of the other children. On one occasion, Brett's clothes were removed in the library area of his kindergarten classroom and he was walked through the room and down the hall to the nurse's office by his classroom teacher and aide, unclothed (although there was a private bathroom in his class).

127. Brett became fearful, easily upset and resisted going to

school or entering his kindergarten class. In March, 1994, defeated by the district's failure to provide their son an appropriate education, the Koneskis decided not to return Brett to Kistler. On March 30, Brett was transferred to another school, Dan Flood Elementary and placed in a kindergarten class taught by a teacher who had prior experience (not in the district but in a Head Start program) working with children with special needs. There is no special "program" at Dan Flood for teaching children with Brett's educational needs, but only more acceptance of his presence in regular class.

128. In March, 1994, while Brett was at home awaiting placement at Dan Flood, the Koneskis filed a second complaint with PDE charging that the provisions in Brett's IEP requiring teacher and staff training in positive behavioral approaches, integrated therapies and curriculum adaptations had not been implemented. They further alleged that rather than a planned program of positive behavioral strategies as called for in the IEP, the school district used a time out chair. The Koneskis asked PDE to assure that PDE assure that personnel at Kistler Elementary School were trained in inclusion, disability awareness, adaptations to the curriculum, best practices and implementation of Brett's IEP.

129. The Koneskis received no response and when on June 7, 1994, they called PDE to ask why they had not responded, PDE staff said they were unaware that a second complaint had been filed.

130. The Koneskis want Brett to return to his home school. Brett does not go to school with his friends from the neighborhood. He rides the bus for children in emotional support classes to and from Dan Flood. Sometimes he has to leave school early because of the bus schedule. The Koneskis have agreed reluctantly to keep

Brett at Dan Flood for first grade but have asked that the district plan to return him to Kistler for second grade. The district has agreed to consider this only as a "possibility."

131. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Brett Koneski his right to receive a free appropriate education in regular classes with supplementary aids and services.

132. MICHAEL WINTERING is thirteen years old and lives with his parents, Michael and Nancy Wintering, in Philadelphia, Pennsylvania. Michael is a gifted student with pervasive developmental disorder-not otherwise specified (PDD-NOS), a disability that is part of the autism spectrum. He is a former student in the Philadelphia School District, where he attended the Farrell and Franklin Schools in Northeast Philadelphia. He was identified by the school district as gifted in 1988.

133. Michael has superior intelligence, exceptional reading ability and savant-like gifts; however, his expressive language and learning style are very concrete, and he is able to repeat more than he understands. He has poor social judgment, stemming at least in part from his concrete learning style. Because of these characteristics, he needs specialized instruction and modification of the regular education curriculum.

134. Although Michael was identified as having PDD-NOS at the age of two years and eight months, the Philadelphia School district refused to provide services appropriate to his disability. He was later identified as gifted and received gifted support one day a week, but with no supplementary aids and services for his PDD-NOS. When his parents asked for these services, they were told, "you don't want the special education label" for Michael.

135. Without supplementary aids and services, Michael had difficulty meeting the expectations of the gifted program and the regular education classrooms. His teachers punished and humiliated him. Michael developed behavioral problems and identified himself with "the bad children." He was once suspended from school and in 1991 he experienced a severe clinical depression, which further compromised his ability to succeed in school.

136. The school district's response to Michael's problems with school resulted in his classification as "socially and emotionally disturbed" (SED) and his placement in 1992 in a separate emotional support class where he repeated the sixth grade. The school district offered Michael's parents no other options to SED placement.

137. In the emotional support class, Michael was surrounded by children with aberrant behavior which he began to model. Because of his concrete learning style and inability to assess social situations, Michael is especially likely to imitate the behavior of the children with whom he is educated.

138. Michael's difficulties in the emotional support class became so serious that his parents withdrew him from school, taught him at home for eight months, and, in January, 1994, placed him at a private school, St. Helena, without school district involvement. He finished the school year at St. Helena's in a regular class with no support other than acceptance and understanding by his teachers. He did not receive the supplementary aids and services he needs to receive an appropriate education, but his parents believe that he is not being harmed as he was in public school.

139. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Michael Wintering his right to

receive a free appropriate education in regular classes with supplementary aids and services.

140. SARAH NOE is twelve years old and lives with her parents, Roland and Janice Noe in Langhorne, Pennsylvania. Sarah has Down Syndrome and attends Neshaminy Middle School in the Neshaminy School District. Mr. and Mrs. Noe want Sarah to have the opportunity to be educated in her neighborhood school with her nondisabled peers. They believe that this will best prepare her for an adult life of working and living in her community.

141. Sarah was classified as educable mentally retarded (EMR) upon her entry into the Neshaminy School District at the age of five in 1987. From school year 1987-88 through school year 1991-92, she was educated in a full-time self-contained EMR/Learning Support classroom. This classroom was located within the school district, but was not within her local neighborhood school. During that time, at her parents' request, the district allowed Sarah some limited mainstreaming in music and art.

142. In December 1991, Sarah's parents requested a change in placement for school year 1992-93. They requested that Sarah be moved to Oliver Heckman Elementary School, the school she would attend if she did not have a disability. They explained to Neshaminy School District administrative personnel that they wanted Sarah to get to know the students at her local elementary school so that she could comfortably attend the neighborhood middle school, Neshaminy Middle School. At that time, they requested that preparations be made, including teacher and staff training, during the remainder of the 1991-92 school year so that a smooth transition could take place. Despite numerous telephone calls and a follow-up IEP meeting, their request went unanswered until August

1992.

143. Sarah was moved to Oliver Heckman Elementary School beginning the first day of school 1992. Her parents were advised by the regular education teacher that she had not been assigned to that classroom until the day before school started. There was no opportunity for the teacher and staff training that was requested, as well as planning for classroom and curriculum modifications. During the 1992-93 school year, Sarah received academic instruction within a self-contained learning support classroom and was included, with some support, in a regular fifth grade homeroom, music, art, gym, library, school chorus, and social studies class. Sarah made progress in expressive and receptive language, socialization, reading, language comprehension, and problem-solving. She demonstrated an understanding of social studies concepts that far exceeded her parents' and teachers' expectations.

144. Throughout the year, Sarah's parents made repeated requests for preparation and training of staff at Neshaminy Middle School. At a meeting in June 1993 between Sarah's parents and representatives from the Intermediate Unit, Neshaminy Middle School, Oliver Heckman, and the school district administration, an IEP was developed which incorporated supplementary aids and services for Sarah's successful transition into middle school. Again, her parents requested staff training; on the last day of school, a one day training was provided to the staff at the Middle School by members of the Intermediate Unit addressing the needs of Sarah and two other new students with special needs (a blind student and a student from Poland).

145. In September 1993, Sarah began classes at Neshaminy Middle School. As far as Sarah's parents know, no additional

training was provided to Neshaminy Middle School staff. Sarah participated in regular education home room, music, art, home economics, gym, industrial arts, computer and chorus. She received special education instruction in functional reading and math, science, and social studies in a learning support class. Discussions between her parents and her teachers indicate that neither regular nor special education teachers had a clear understanding of why Sarah was in their classes or how to make adaptations to meet her needs.

146. In effort to address these issues, Sarah's parents requested an IEP meeting in October 1993. Because of the parents work schedules, they requested an evening meeting. A meeting was scheduled in November 1993; it was attended by the parents and a school district representative. None of Sarah's teachers was present, and therefore, a discussion of Sarah's educational support needs could not take place. Repeated attempts were made to reschedule this meeting, but the school district did not accommodate the parents' scheduling needs. Finally, in February 1994, a daytime meeting was convened. The special education teacher, who had been appointed as the "lead" teacher of the team, was not in attendance and as a result, several key issues remained unresolved, including the development of a consistent behavior plan, the defining of the role of the "lead" teacher, the poor communication between parents and educational staff, and a marked regression in Sarah's math skills. Subsequent attempts by the parents to schedule another meeting have failed.

147. Throughout her school years, Sarah has exhibited challenging behavior. This behavior has intensified in scope and frequency during the last school year. Sarah's parents believe that

this is a result of the school inability to provide appropriate supplementary services, including behavior management. For example, Sarah has resisted going to class by sitting in the hall and refusing to move or by deliberately going to the wrong classroom. The school is unable to deal with these behaviors effectively. Communication between the parent and school staff has been inconsistent and generally negative in nature. Though Sarah has made some academic progress in reading and computers this year, her parents are greatly concerned about the regression in her behavior. Additionally, Sarah continually tells her parents that she hates school. It has become increasingly difficult to get her to attend school each day. Again, they believe that Sarah's progress has been hindered by the lack of training and preparation given to staff.

148. Throughout the three years that Sarah's parents have requested inclusionary educational opportunities for her, Sarah's parents have provided the school district with information regarding training opportunities for their staff, names of individuals who could deliver training and ongoing technical assistance, and written resource materials. They have met with Sarah's teachers and instructional aides and Neshaminy staff on an ongoing basis to make suggestions as to curriculum adaptations and modifications and behavioral interventions.

149. Sarah's parents look forward to day when Sarah will again enjoy attending school. They want Sarah to have the opportunity to become a valued, participating member of her school community.

150. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Sarah Noe her right to receive a free appropriate education in regular classes with supplementary

aids and services.

151. TIFFANY ZIMENOFF is eleven years old and lives with her parents, Richard and Robin Zimenoff, in Langhorne, Pennsylvania. Tiffany has Down Syndrome and is entering the fourth grade at Herbert Hoover Elementary School in the Neshaminy School District. Tiffany's parents want Tiffany to have the same experiences of growing up of any eleven year old girl. They want her to play with neighborhood friends, attend birthday parties and sleepovers. At the same time, they want Tiffany to learn the skills, both social and academic, she will need in order to develop into a productive adult member of her community. They believe that Tiffany can be given the opportunity for a "regular" life and can be taught the skills she needs by being supported in a regular education class at her neighborhood school.

152. Tiffany became a student in the Neshaminy School District in September 1988. At that time, she was classified "educable mentally retarded" and placed in a full-time self-contained "EMR" classroom at Albert Schweitzer Elementary. No other placement options were discussed with her parents. In October 1990, her parents requested a change of placement for Tiffany into a regular kindergarten class at her home school of Herbert Hoover Elementary School, with part-time special education services for reading, math, and language in a self-contained setting. The school district refused the change and the Zimenoffs requested a due process hearing. After the hearing began, the district entered into a settlement agreement with the parents in which Tiffany would attend the afternoon session of the regular kindergarten program at Albert Schweitzer Elementary School with an instructional support aide and a half-day session of the "learning skills support

program." Tiffany began kindergarten in April 1991.

153. In June, 1991, the district presented the Zimenoffs with a Notice of Recommended Assignment recommending a change of placement back into the full-time learning support classroom with mainstreaming for "specials"; music, art, gym, library. Tiffany's parents rejected the NORA and requested another due process hearing. On September 18, 1991, the hearing officer ordered that Tiffany be educated in a regular first grade classroom, accompanied by an instructional support aide, with a pull-out program for reading and math. He ignored the parents' request that Tiffany attend her local neighborhood school.

154. Tiffany's parents filed a complaint with the Bureau of Special Education in September 1991 in an effort to gain a decision regarding whether Tiffany's education program could be implemented at her local neighborhood school, Herbert Hoover Elementary School. The reviewer from the Bureau of Special Education was able to clarify to the school district that Tiffany would be eligible to receive her reading and math instruction in the learning support classroom at Herbert Hoover Elementary School, even though it had previously been a classroom for children with learning disabilities. Unfortunately, the learning support classroom at Herbert Hoover Elementary School was at its maximum enrollment and the school district was not willing to apply for a waiver for one additional part-time student. Tiffany had to wait until a student left that class until she would be able to attend her local elementary school.

155. In October 1991, Tiffany began her first day of first grade at Albert Schweitzer Elementary School. When her mother entered the classroom that Tiffany had been assigned to, she found

the teacher sitting at her desk in tears. When Mrs. Zimenoff asked what was wrong, the teacher replied that she did not know what she was supposed to do with Tiffany. She had only been told on Friday afternoon that Tiffany would be in her classroom (it was now Monday). Mrs. Zimenoff asked if she had seen a copy of Tiffany's IEP and she replied that she had not. Mrs. Zimenoff looked over the lesson plan for the day and give the teacher some ideas on how to include Tiffany in the activities. She then asked to see Tiffany's desk. Tiffany's desk was in a corner of the room surrounded by several adult-size chairs. The teacher explained that the chairs were for Tiffany's aides. Mrs. Zimenoff was then shown a copy of a schedule which indicated that three or four aides had been assigned to Tiffany. Each aide was assigned different times to accompany Tiffany throughout the day. When Mrs. Zimenoff asked the principal what preparation had been made for the teacher and the other students for Tiffany's arrival into first grade, she was told that the principal had meet personally with the other first grade students and explained to them that a "retarded child" would be in their class on Monday. They were warned not to call her "a retard."

156. During the remainder of her time at Albert Schweitzer Elementary School, Tiffany's mother spent much time communicating through a communication notebook to both the regular and special education teachers in an effort to assist them in adapting lessons for Tiffany. To the parents' knowledge, no training was given to either the regular or special education teachers in how to adapt curriculum, facilitate social interactions, or on any other issues that would have supported Tiffany's inclusion in first grade.

157. In February, 1992, Tiffany was able to transfer to her

home school, Herbert Hoover. During the rest of the year, Tiffany's mother communicated regularly with the first grade teacher and recommended methods for adapting materials and strategies to help Tiffany to be an active participant in the classroom. Tiffany was assigned an instructional support aide, on an as-needed basis. The Zimenoffs asked that peer supports be utilized in the classroom so that Tiffany did not become overdependent on an adult for support. Tiffany made excellent progress, developing more age-appropriate social skills and expanding her verbal communication.

158. In May 1993, Tiffany's parents requested that her second grade teacher be trained and provided opportunities for team planning before the next school year began. However, to the Zimenoffs' knowledge, no training in methods for including children with mental retardation in regular classes was ever made available to the second grade teacher.

159. Shortly before the first day of school, Tiffany's mother meet with the second grade teacher. Mrs. Zimenoff had prepared a packet of information on strategies for the successful inclusion of students with disabilities into regular classroom. This information was meet with great enthusiasm by the second grade teacher. Mrs. Zimenoff and the second grade teacher worked together throughout the year to make the year a success for Tiffany. As far as the Zimenoffs know, the only training or technical assistance afforded to Tiffany's teacher was that which was given by the Zimenoffs. Tiffany made excellent progress, both socially and academically, so much so that she began to be included for regular mathematics with an adapted curriculum and was pulled out only for reading.

160. In September 1993, Tiffany began third grade. Before

school began, Mrs. Zimenoff met with the regular education teacher and the instructional support aide, and they told her they had not received any training, beyond meeting with the previous year's teacher. Again, Mrs. Zimenoff shared information regarding inclusion strategies with the teacher and aide.

161. Several incidents occurred during the 1993-94 school year that indicated that Tiffany was no longer an active participant in the classroom. The Zimenoffs noticed that science and social studies assignments and tests were no longer adapted for Tiffany. An observer in the classroom reported that Tiffany spent a good amount of time working one-on-one with aide, separate from the other students. When asked why adaptations were not being made, the instructional support aide indicated that she was too busy to make them. The regular educational teacher often seemed confused about her role. She indicated that she felt her job was to "expose" Tiffany to the regular education curriculum and let her learn what she could learn. Discussions with the special education teacher indicated that there was little collaboration or consulting taking place between the two teachers. Meetings with several of the staff working with Tiffany indicated that they wanted to continue to include Tiffany in regular education classes but they felt they lacked the skills to do so successfully.

162. In an effort to address issues that had occurred during the 1993-94 school year, Tiffany's parents drafted a letter to the Director of Pupil Services for the Neshaminy School District requested that training in the areas of "(a) strategies needed to effectively work together as team; (b) planning for inclusion; (c) curriculum adaptation and modification; (d) facilitating peer support and social interaction." They asked that teacher training

be made a related service on Tiffany's IEP. The Zimenoffs identified several resources for the school district from which the needed training could be obtained. In response, they received a memo from the district refusing to include inservice training for school district staff as a related service in Tiffany's IEP. As of the last day of school 1994, none of the teachers nor the aide that will be working with Tiffany during school 1994-95 had received any training from the school district in the areas of need identified by Tiffany's parents. To their knowledge, the school district has made no plans to provide this training in September. Each year, Mrs. Zimenoff has worked with Tiffany's teachers and shared information with them about curriculum modification and inclusion strategies. As a result, each year Tiffany loses two to three months of instruction while her teachers learn the skills necessary to teach her in a regular education setting. The Zimenoffs fear that without adequate training to her teachers and instructional support aide, Tiffany's educational progress will deteriorate.

163. The actions and inactions of defendants as set forth in paragraphs 200-250 below have denied Tiffany Zimenoff her right to receive a free appropriate education in regular classes with supplementary aids and services.

164. THE ARC OF PENNSYLVANIA is a non-profit corporation created in 1949 and existing under the laws of the Commonwealth of Pennsylvania, with approximately 14,000 members and with member chapters in fifty-four of Pennsylvania's sixty-seven counties. The Arc's purpose, for which it expends its resources, is to advance the interests of persons with retardation in Pennsylvania and to secure for them the opportunities available to all persons in the Commonwealth. The members of the Arc include parents, other

relatives, guardians and next friends of children and adults with retardation.

165. For forty-five years the Arc of Pennsylvania and its member chapters have advocated for the right of children with mental retardation to receive an effective education with maximum integration into the classes and schools they would normally attend if they did not have a disability. Originally, parents joined together in the face of exclusion of their children from the public schools first to create and provide alternative services through their association, and then to challenge the schools' exclusionary practices through litigation. In 1971, the Arc of Pennsylvania filed PARC v. Commonwealth of Pennsylvania, 343 F.Supp. 279 (E.D. Pa. 1972) to enforce the right of children with retardation under the Equal Protection Clause to the educational opportunities available to children without disabilities. The result was a landmark consent decree whose essential provisions--a free, appropriate education for all children with disabilities, an Individualized Education Program (IEP) for each eligible child, and the right of children with disabilities to be educated with children who do not have disabilities to the maximum extent appropriate--were codified in 1975 in P.L. 94-142, now the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq. Through the network of 29 Local Task Forces established by the PARC consent decree, Arc members and parents have participated for more than twenty years in implementation and monitoring of the decree.

166. In enforcing the duties of responsible public agencies to provide the educational and other opportunities that are essential to persons with retardation, the Arc has experienced and affirmed

that the opportunity to receive an appropriate, individualized education in regular classes and neighborhood schools fosters learning, growth and development, and further, that it nurtures the friendships and relationships that are vitally important to children with retardation if they are to grow to productive adulthood and become full participants in their communities.

167. THE LEARNING DISABILITIES ASSOCIATION OF PENNSYLVANIA (LDAP) is a nonprofit organization incorporated in 1964 and existing under the laws of the Commonwealth of Pennsylvania, with 18 chapters and 950 members throughout the Commonwealth. Its members are parents, professionals and friends of people with learning disabilities. LDAP's mission, for which it expends its resources, is to promote quality education and to support the general welfare of children and adults with learning disabilities.

168. LDAP assists parents of children with learning disabilities to obtain the most appropriate education for their individual child with a learning disability, whether that be a regular class or special class setting. LDAP's work in the education system includes individual advocacy by a network of advocates around the state who inform parents of their rights, help them prepare for and participate in the individualized education program planning and placement process, and at times in due process proceedings. LDAP also works to disseminate information to families and special and regular education teachers about promising and best practices in the education of students with learning disabilities. Under an advocacy grant from the Pennsylvania Developmental Disabilities Planning Council, LDAP conducts workshops on successful strategies for teaching and managing students with learning disabilities in the regular classroom. LDAP's annual

conferences include programs for teachers and other professionals to sensitize them about the needs of students with learning disabilities and to gain knowledge of how to accommodate their individual learning needs.

169. PENNSYLVANIA PROTECTION & ADVOCACY, INC. (PP&A), is a non-profit corporation existing under the laws of the Commonwealth of Pennsylvania. PP&A has been designated by the Governor of Pennsylvania as the state's designated protection and advocacy agency for persons with developmental disabilities and mental illness. PP&A acts here on behalf of class members in its designated protection and advocacy capacity.

170. PP&A works to protect the civil rights of persons with disabilities throughout Pennsylvania. PP&A expends significant time and resources seeking to enforce the duties of state officials and local school districts to provide children with disabilities with a free appropriate public education, together with the opportunity to be educated with children without disabilities to the maximum extent appropriate. PP&A seeks to ensure that all children with developmental disabilities and mental illness in Pennsylvania are guaranteed the same rights and opportunities to receive an effective education and to prepare for productive adulthood as all other citizens of the Commonwealth.

171. THE PENNSYLVANIA COALITION OF CITIZENS WITH DISABILITIES (PCCD) is an organization created in 1976 and governed by persons with disabilities throughout the Commonwealth of Pennsylvania. Its mission, for which it expends its resources, is to advocate with a unified voice for the civil rights of, and services for, people with physical, sensorial, and mental disabilities through local, state and national forums. PCCD's membership includes 65

organizations of persons with disabilities as well as individual members who are adults and children with disabilities and their families. PCCD's volunteer members and staff advocate for people with disabilities on a broad range of issues including education, transportation, employment, civil rights and access to public services and public accommodations.

172. PCCD and its members have a direct interest in educational policies and practices that affect children with disabilities. They know from first hand experience the importance of an effective education for productive adult life, and the life-long harm caused by ineffective education, unnecessary segregation and low expectations.

173. PENNSYLVANIA STATE CONFERENCE OF NAACP BRANCHES is a component of the National Association for the Advanced of Colored People, the oldest and largest civil rights organization in the country. The conference, founded in 1934, consists of fifty-two branches within the Commonwealth of Pennsylvania. For more than sixty years the Conference and its member branches have advocated for the rights of the African-American and other minorities within the Commonwealth.

174. The NAACP's purpose, for which it expends its resources, is to advance the interest of African-Americans and other minorities to: (1) secure opportunities that supposedly are readily available to all persons residing in the Commonwealth of Pennsylvania and (2) removing all barriers which impeded African-American and other minority youth from receiving a free and equal education.

175. AUTISM SUPPORT AND ADVOCACY IN PENNSYLVANIA (ASAP) was formed in 1988 and incorporated in 1992 as a non-profit corporation

operating under the laws of the Commonwealth of Pennsylvania. Its purpose, for which it expends its resources, is to advance the full inclusion of Pennsylvania's citizens with autism in all aspects of our society, to secure full citizenship and social justice for persons with autism, and to promote the general welfare of all individuals with autism, Pervasive Developmental Disorder (PDD) or other profound disabilities of communication and behavior. ASAP is an all-volunteer, parent-directed association which fosters self-help and self-advocacy through values-based training and information sharing.

176. ASAP is directed by a fourteen person Steering Committee selected to represent the regional, cultural, economic and ethnic diversity of the Commonwealth of Pennsylvania. Thirteen Steering Committee members are parents of persons with autism/PDD; of those, nine have children with autism of school age and one has a child who is transitioning from school to work. ASAP has approximately 350 subscribing members, including both individuals and organizations. A majority of individual subscribers are parents of pre-school and school age children with autism/PDD. A substantial number of professionals who work in the school systems of Pennsylvania also are members.

177. Education is the primary advocacy concern of ASAP. ASAP founders' first effort was to shape the definition of autism/PDD contained in the 1990 Pennsylvania Special Education Standards, and ASAP's earliest information brochures concerned the needs of children with autism in the special education system. ASAP has continued to promote, through newsletters and conferences, the values of school and community inclusion, and to inform parents and educators about facilitated communication (a sets of techniques

enabling persons with autism and other communication disabilities to communicate using a keyboard) and other positive approaches to address the communication and behavioral challenges of autism/PDD. ASAP supports and fosters the growing appreciation of the competence of persons with autism and their ability to make and express choices. ASAP is convinced that inclusive, supported education enables children with autism/PDD to benefit from the educational opportunities afforded non-disabled children in the Commonwealth and is essential to the accomplishment of ASAP's goal of inclusion in all aspects of society for all citizens with autism and PDD.

178. PENNSYLVANIA TASH was created in 1990 as a member chapter of International TASH. Included in its members across the Commonwealth of Pennsylvania are professionals, self-advocates and families of children and adults with disabilities. Its mission, for which it expends its resources, is to actively support individuals with varying abilities so that full community membership becomes a reality. In addition to education, PA-TASH advocates for people with disabilities and for the implementation of best practices in a wide range of areas including community living, positive behavioral approaches, attendant care, public services and public accommodations and facilitated communication. PA-TASH has served as an amicus curiae in litigation on behalf of people with disabilities on issues including accessibility and involuntary sterilization.

179. In education, PA-TASH advocates for the full and equitable implementation of promising and best practices so that children and families have meaningful access to inclusive education in regular classrooms. PA-TASH members know and experience the

unfortunate reality that in Pennsylvania, the opportunity to choose inclusion varies widely across the Commonwealth and depends on where the family lives.

180. PARENTS UNION FOR PUBLIC SCHOOLS was founded in 1972 and has approximately 4,000 members, including families of children with disabilities. Its mission, for which it expends its resources, is to promote and develop parent involvement in the public schools. Parents Union carries out its mission through programs to train and educate public school parents in Philadelphia to participate in their children's educational experience and resolve school-related problems and by monitoring the actions of the Board of Education and school administration. All members of the Parents Union Board of Directors, most of the staff and the volunteers who form the backbone of the organization are public school parents.

181. Both at the local and systemwide levels, Parents Union has been at the forefront of issues affecting the education of public school students; It assists thousands of parents each year, is active at the national level in educational organizations such as the NATIONAL Coalition of Advocates for Students and the National Parent Network on Disabilities and is widely recognized as an informed and experienced parent voice in Philadelphia. Its activities include the provision of parent training programs and educational workshops for more than 600 parents of children with and without disabilities annually; publication of a bi-monthly newsletter to keep parents and citizens informed about educational issues; assisting more than 1400 parents each year with school-related problems and appropriate special education services for their children; presenting testimony at the Philadelphia School District Board of Education; and leadership in citywide coalitions

to address the needs of children and families. Through its activities Parents Union collects information on systemic problems and violations of children's rights under IDEA, § 504 of the Rehabilitation Act and the Americans with Disabilities Act. Parents Union is a plaintiff intervenor in Pennsylvania Human Relations Commission v. School District of Philadelphia and Harry and Annemarie Gwynne, ASPIRA of Pennsylvania, et al., in which the Honorable Doris A. Smith ruled on February 4, 1994 that severe inequities exist in the education provided to public school students in the School District of Philadelphia and ordered substantial reform of District programs.

182. The PHILADELPHIA POLICE & FIRE ASSOCIATION FOR HANDICAPPED CHILDREN (PPFA) was formed in December, 1977 by families of police officers and firefighters who were concerned about the needs of their sons and daughters with disabilities. PPFA was incorporated under the laws of the Commonwealth of Pennsylvania in May, 1979. Beside Police and Fire families, members include other families and interested citizens who are not affiliated with the police or fire departments; about 160 families are registered as current members. The purpose of PPFA, for which it expends its resources, is to secure the economic, social and educational rights of all people who are disabled and ensure that their needs are met.

183. PPFA advances its purpose through parent education and advocacy. As educators, PPFA members inform parents of their rights and provide parent training on how to obtain appropriate educational programs under the Individuals with Disabilities Education Act (IDEA). As advocates, PPFA members assist individual parents as they negotiate with school districts to ensure that their sons and daughters receive appropriate educational programs

as mandated by IDEA. PPFA also advocates for people with disabilities at the local, state and federal levels through participation in city and state councils, committees and task forces; providing testimony at public hearings; and engaging in due process hearings and litigation when necessary to ensure that educational programs comply with the "Right to Education" mandate. PPFA sponsors meetings and distributes informational materials about topics of current interest to families of persons with disabilities including best practices in the area of education of children with disabilities.

184. Members of the Philadelphia Police and Fire Association were among those who sought and won a free, appropriate education for all children with disabilities under P.L. 94-142, now known as IDEA. In the late 1970s, PPFA filed an action to enforce P.L. 94-142 and the consent decree in PARC v. Commonwealth; this action led to a consent decree entered in 1982 under which the Philadelphia School District established the Urban Model Project, a program for life skills training in regular public schools for children with disabilities who heretofore had been educated in separate schools for children with disabilities only. This program, which included a strong emphasis on effective inservice training and technical assistance for teachers of students in life skills programs, represented best practice in the early 1980s for educating children with severe and multiple disabilities and became a national model. PPFA also participated in the Armstrong v. Klein litigation, which secured Extended School Year services for students with disabilities throughout the country. At present, PPFA is active in supporting transition services for students exiting the public schools, and advocates persistently for all those who are not

receiving support as adults, so that waiting lists may be eliminated and quality services are available to all who need them.

185. Ultimately, the mission of the Philadelphia Police and Fire Association is to support people with disabilities and their families, providing opportunities for them to live full lives of dignity and respect and to be fully included in their communities.

186. DISABLED IN ACTION (DIA) was founded in 1973 during the struggle to affirm the civil rights of persons with disabilities by enacting Section 504 of the Rehabilitation Act of 1973. Its mission, for which it expends its resources, is to advocate for all persons with disabilities, to promote inclusion for all persons with disabilities both adults and children and to bring about changes in society to meet that goal. In pursuit of that mission, DIA worked for promulgation of the § 504 regulations in 1977, the enactment of the Americans with Disabilities Act of 1990 and has struggled to assure implementation and enforcement of all civil rights laws that affect persons with disabilities.

187. THE A.N.D. ALLIANCE is an organization founded in Philadelphia in 1993 with a core membership of families of children with disabilities. Its mission is to create and support efforts to build a more humane and inclusive society. "A.N.D." stands for A Necessary Development Acccepting No Discrimination on the basis of ability, culture or age.

188. A.N.D. has a keen interest and investment in the education of children with disabilities and the enforcement of federal law protecting those children's civil rights in the education arena. Acting on the assumption that if children are to learn to live together, they must be educated together, A.N.D. has sought to improve the quality of education and advance the progress

of inclusion through parent peer training, advocacy, presentation of testimony, letter campaigns, petitions, sponsoring conferences, collaborating with other disability rights organizations and dissemination of information about special education law and practice. A.N.D. advocates on behalf of children with disabilities and their families and supports and teaches them to advocate for themselves.

Class Action Allegations

189. Individual plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). The plaintiffs bring this action on their own behalf and on behalf of all school age students with disabilities who have been denied the option of receiving a free appropriate education in regular classrooms with individualized supportive services or have been placed in regular education classrooms without the supportive services, individualized instruction and accommodations they need to succeed in the regular classroom.

190. The class is subdivided into two subclasses: (a) the subclass of students with disabilities who, because of defendants' unlawful policies and practices are unnecessarily segregated in separate classrooms and separate schools, and (b) the subclass of students with disabilities who, because of those same unlawful policies and practices are mainstreamed in regular classrooms but denied the specialized instruction and accommodation they need to receive an appropriate individualized education.

191. The class is so numerous as to make joinder of all members impracticable. The number of class members is not known to plaintiffs at present, although it could be ascertained by defendants.

192. The members of the class have all been denied rights under federal law as a result of the actions, inactions, policies, and practices of defendants. Plaintiffs seek for themselves and for all members of the class declaratory and injunctive relief to eliminate those actions, policies and practices and to require defendants to establish standards and procedures that do not arbitrarily deny to plaintiffs and the class their rights guaranteed by federal law.

193. There are substantial questions of law and fact common to the entire class.

194. The claims of the plaintiffs are typical of the class and predominate over any questions affecting only individual needs. The named plaintiffs will adequately and fairly represent the interests of the class. A class action is superior to any other available method for the fair and efficient adjudication of the controversy. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

Defendants

195. DONALD M. CARROLL, JR. is Secretary of the Pennsylvania Department of Education (PDE). As its chief executive officer, he is responsible for exercising all the powers and duties of the Department. His responsibilities include:

(a) General supervision and oversight of all educational programs for exceptional students and early intervention programs within the Commonwealth;

(b) Assuring that educational programs for exceptional children meet state and federal requirements;

(c) The establishment of administrative procedures for

ongoing monitoring of program implementation, including evaluation of the effectiveness of special education services and programs, taking corrective action and ensuring the provision of appropriate programs for exceptional students;

(d) The imposition of sanctions upon public agencies to ensure that special education plans are submitted as required, approved in a timely manner, implemented as specified and evaluated accordingly;

(e) The establishment and maintenance of a comprehensive special education information system that allows for the monitoring of service delivery of school districts and intermediate units;

(f) The exercise of appropriate and responsible fiscal oversight and control;

(g) The evaluation and approval of teacher education programs leading to the certification of professional personnel in the schools;

(h) The annual review of teacher certification regulations to report on needed revisions;

(i) The dissemination of information about promising practices and the promotion of their use;

(j) Review of special education plans, budget and plans for comprehensive personnel development submitted by local school districts and disapproval of plans and budgets that fail to assure that the services and programs of the district are adequate in quantity and variety to meet the needs of persons of every exceptionality.

196. JOSEPH F. BARD is the Commissioner of Elementary and Secondary Education within the Pennsylvania Department of

Education. He is responsible for policy, monitoring and research in all areas of elementary and secondary educational including the education and training of exceptional students, the subjects to be taught and the activities to be conducted in elementary and secondary schools, and the qualifications for employment of professional personnel in the public schools.

197. MICHELLE DESERA is the Director of the Bureau of Special Education within the Pennsylvania Department of Education. She is responsible for carrying out the functions of the Department with respect to programs and services for exceptional students.

198. M. LAWREACE ANTOUN, EARL H. HORTON, MADGE K. BENOVITZ, E. PETER BENZING, RONALD R. COWELL, EDWARD DONLEY, KARL R. GIRTON, EDITH W. ISACKE, R. GERARD LONGO, BEATRICE MOORE, JAMES J. RHOADES and HOWARD SELEKMAN are members of the State Board of Education and the Council of Basic Education of the Commonwealth of Pennsylvania. Their responsibilities include the power and duty:

(a) To adopt and promulgate rules, regulations, policies, principles and standards governing the educational program of the Commonwealth;

(b) To adopt a master plan for basic education for the guidance of the Governor, the General Assembly, and all public school entities, containing recommendations for school program approval, evaluation and requirements; school personnel training and certification; student testing and assessment; school governance and organization; curriculum materials development; school finance; school buildings and facilities; transportation; technical services and support services to local education agencies; and the projected long-range needs of the public school system of the Commonwealth; and

(c) To establish and promulgate standards of preliminary and professional education and training for teachers in the Pennsylvania schools.

The Facts

199. Education in regular classes with supplementary aids and services is often termed supported inclusive education or inclusion. Inclusion of school age students with disabilities means that

- (a) The student receives a free, appropriate public and individualized education;
- (b) The student receives specially designed instruction, supplementary aids and services and other necessary support;
- (c) The student receives maximum integration into the classes and school the student would attend if she or he did not have a disability;
- (d) The student is considered, treated and addressed, so that he or she is seen by others, as someone who "belongs" and is a full member of the school and community.

In a program of inclusive education, students receive specialized instruction and related services in regular classroom settings through methods such as team teaching; consultation and collaboration among regular education teachers, special education teachers, parents and related service personnel; use of classroom aides and peer tutors; accommodations for individual learners; and modification of the regular curriculum.

200. Supported inclusive education is not the same as "mainstreaming"--that is, placing a child with a disability in a

regular classroom without modification or support and requiring the child to meet the same curricular expectations as the nondisabled students in that class.

201. Supported inclusive education offers many advantages to students with disabilities. Regular education age-appropriate classes frequently offer a richer educational environment than self-contained special education settings. Classroom activities are more challenging and engaging; creativity is stimulated; expectations for achievement are higher. In many self-contained settings, expectations for students with disabilities are low, instruction is rote and mechanical. The presence of many students with challenging needs overwhelms the teacher. Teachers are forced to teach to the lowest common denominator because of the clustering of students with extremely diverse needs.

202. In regular classes, students with disabilities may receive considerable non-academic benefits, such as language and role modeling, from association with peers who do not have disabilities.

203. However, placement in regular class without effective accommodation and support can lead to harm. Students who, because there is no accommodation, cannot meet teachers' expectations in a regular class, risk failure and loss of opportunity to master needed skills. Often, they are punished with loss of recess, points, school parties and other activities. They are retained because of failing grades.

204. A small number of school districts in Pennsylvania have chosen to provide students with disabilities with a full opportunity to choose supported inclusive education and have trained their personnel accordingly. Parents in other school

districts who wish their children to receive a supported inclusive education face long and costly due process proceedings. Fulfillment of the right of parents and students to choose education in the regular classroom with accommodation varies depending on where the family lives.

205. The disparity of opportunity for students with disabilities to be educated with their non-disabled peers is due to PDE's failure to enforce, through its general supervisory authority, two interrelated mandates of the IDEA: the obligation to train personnel in promising practices and the obligation to offer a full continuum of services, including specialized instruction and other supplementary aids and services in regular classrooms. Without effective state oversight, local school districts are free to provide accommodation to students with disabilities in regular classrooms if, but only if, they choose to do so voluntarily.

Teacher Training in Promising Practices

206. Under the IDEA, 20 U.S.C. §§ 1414(a)(1)(C)(i), 1413(a)(3) and 34 C.F.R. § 300.380(c), state and local education agencies have a duty to carry out a program of comprehensive personnel development to train regular and special education personnel in promising practices developed through research and demonstration. The program must include

- (a) The inservice training of general and special educational instructional, related services and support personnel;
- (b) Procedures to insure that all personnel necessary to carry out the purposes of [IDEA] are qualified ... and that activities to carry out this personnel development plan are scheduled; and
- (c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for

handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

34 C.F.R. § 300.380(c).

207. In many school districts in Pennsylvania, teachers are trained in teaching practices that hinder inclusive education such as "teaching as talking," reliance solely on textbooks for instructional material, and referring students to special programs first and adapting instruction as a last resort. Reform of teacher training can have a significant impact on teachers' classroom practice and enhance the ability of regular education teachers to adapt instruction to the needs of all students. Yet, if change in teaching practice is not supported in schools, it soon dies as teachers return to the norms of instruction for which they are currently reinforced.

208. Because the state of the art in education, including the knowledge of how to provide supplementary aids and services in regular classes, is always advancing, enforcement of IDEA's requirement that comprehensive personnel development plans make provision for training in promising practices developed through research and demonstration is of critical importance to children and families seeking inclusion.

209. Pennsylvania state law, P.L. 1602, No. 178 (Act 178), codified at 24 P.S. 12-1205.1, requires each district to formulate a professional development plan for its schools. The plan is prepared by teacher representatives chosen by the teachers and administrative representatives chosen by the administrative personnel of the district. PDE is responsible for establishing the

minimal content of the plans, and for approving or disapproving them.

210. The typical Act 178 plan submitted by a school district is framed on a high level of generality and lacks specificity about the content of professional development activities. The plans do not explain how regular and special education teachers and administrators will acquire "significant information derived from educational research, demonstration, and similar projects," or how "promising educational practices and materials developed through those projects" will be adopted by the district. Plans state, for example, that personnel will learn "strategies for special need students," or that they will acquire "knowledge of the uniqueness of special needs students and techniques to address their needs," without further specificity or detail.

211. PDE provides inservice training and technical assistance in inclusive practices and in-class support to school districts who request such training and assistance, yet it does not require school districts to train their own staff in those practices nor to demonstrate mastery of inclusive education. PDE training is limited and, above all, it is voluntary; often, it is requested by a school district that has agreed to educate an individual child in regular class at the insistence of the child's parents. As a result, mastery of inclusive practices is viewed by school districts as the responsibility and domain of PDE.

212. In other states, boards of education have established certification requirements for special and regular educators that require that all teacher trainees take both special education and regular education courses.

213. A system of certification and teacher training that

requires mastery of both the technology of special education and that of regular education prepares teachers better to accommodate the needs of a diverse student body. The "technology of individualization" developed by special education--including techniques of individualized planning, professional teamwork and powerful tools for assessing individual learning styles, skill levels and social and behavioral needs--needs to become more readily available to regular education teachers. Conversely, the innovations developed in regular education, such as cooperative learning, whole language approaches to reading and language, interdisciplinary teaching (methods that emphasize cooperation and empowerment of children of diverse cultural backgrounds and teach children to see the relevance of school to life) need to become more readily available to students with special education needs.

214. However, the PDE defendants have not promoted such an integrated system. To the contrary, local school districts in Pennsylvania typically maintain a rigid and artificial separation between regular and special education. This system encourages a bifurcation in which specialized instruction is provided only in restrictive education settings. Regular education teachers in whose classes a student with a disability is "mainstreamed" often are not required to attend that student's IEP meeting; consequently, they are not considered responsible for implementation of a disabled student's IEP and frequently are not even provided with a copy of the student's IEP. An itinerant (part-time) special education teacher is frequently expected to perform all necessary support for a large caseload of "itinerant" special education students.

**The Non-Availability of
Supplementary Aids and Services in Regular Classes**

215. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401 et seq., requires each school district and state agency receiving funds under the IDEA to insure that a continuum of alternative placements is available to meet the needs of handicapped students for special education and related services. The continuum required must include the alternative of instruction in regular classes and must make provision for supplementary services to be provided in conjunction with regular classroom placement. 34 C.F.R. §300.551.

216. PDE has failed to assure the availability of a full continuum of educational placements to afford students with disabilities the opportunity to be educated in regular classes with supplementary aids and services to the maximum extent appropriate.

217. PDE has failed to assure that placement decisions are based on a student's IEP or the students' needs. Instead, placement decisions often are made before the IEP is developed. This practice leads to unnecessary segregation, the failure to consider supportive intervention in regular class, and to placement in regular classes with few specific supports or accommodations set forth in the IEP.

218. Many school districts in Pennsylvania make placement decisions for students with disabilities by "matching" the child's disability to a program that is available, without considering whether the goals and objectives in a child's IEP could be met in the regular classroom with supplementary aids and services. Further, they fail to consider the full range of supplementary aids and services, including curricular adaptations and modifications, the support of instructional assistants, instructional support teachers and special education personnel, that could enable the

child with a disability to be satisfactorily educated in the regular classroom, but consider only the services that are readily available or already exist.

219. Many school districts in Pennsylvania do not consider regular classroom placement as an option, let alone the preferred option, for students with certain disabilities, including retardation, autism and social and emotional disabilities, and do not seriously discuss this option with the parents of students with disabilities. As a result, less than three percent of all children classified as mentally retarded in Pennsylvania are fully included in regular classes; 86% of these students spend most of their day in a separate class. Of children classified with autism or PDD, only 1% are fully included, while 98% spend most of their day in a separate class.

220. Young children with disabilities (ages three to five) are entitled to a free appropriate public education under federal and Pennsylvania law. Federal policy directives state that education agencies that do not operate regular preschool classes for children without disabilities must make available the option of education in regular classes to eligible young children with disabilities by other means, such as contracting with, paying tuition for, and providing technical assistance to private preschool programs.

221. In Pennsylvania, early childhood programs are provided by the Intermediate Units, nearly always in separate classes or schools. In most Intermediate Units, young children are offered no alternative to the special classes operated by the IU. Parents who request a free, appropriate and inclusive early childhood education are told that no such programs are available.

222. PDE has failed to prevent the common practice of refusing

to integrate students with disabilities until they "earn" their way out of special education, either by demonstrating the ability to master the regular education curriculum or demonstrating certain behavioral skills.

223. The result of these failures is that some students who could make more educational progress in a regular classroom with supplementary aids and services than in a self-contained setting are denied the benefits of regular classroom placement; other students are placed in regular class but denied a free appropriate public education.

224. PDE has failed to assure that students with disabilities have opportunities to participate in nonacademic and extracurricular activities such as field trips, recess, home room, sports, clubs and student organizations with nondisabled students.

**Defendants' Failure to Exercise Their
General Supervisory Authority to Require
Adequate Personnel Development and
Availability of Supplementary Aids and Services**

225. As a state educational agency (SEA) receiving funds under the Individuals with Disabilities Education Act (IDEA), PDE is responsible for ensuring that all requirements of IDEA, including the personnel development requirements set forth above, are carried out in Pennsylvania. IDEA requires PDE and other SEAs to exercise general supervision over all educational programs for children with disabilities within the state and to assure that all public agencies within the state comply with the requirements of IDEA. 20 U.S.C. § 1412(6). PDE's general supervisory authority extends to 501 local education agencies (LEAs) and 29 intermediate units (IUs).

226. In the exercise of its general supervisory authority, PDE

is responsible for the adoption and use of proper methods for enforcement of the obligations imposed by IDEA on all agencies, institutions and organizations in Pennsylvania. 20 U.S.C. § 1232(b)(3)(A) and 34 C.F.R. §§ 300.600, 300.194 and 80.43.

227. PDE's 1992-94 State Plan states that

The Secretary shall superintend the organization of such special education classes and such other arrangements for special education and shall enforce the provisions of the act relating thereto (22 PA Code § 1372(3)).

The Plan further states that the authority accorded the Secretary by state statute "assures that enforcement power and authority rests with the Secretary."

228. The enforcement powers available to PDE include the following:

(a) Disapproval of a local special education plan.

(b) Deferral of the disbursement of state and federal funds.

(c) Reduction in the amount of funds disbursed to a school district--for example, by the amount of money it takes to provide an appropriate education to a child or group of children if a district fails to provide those children with an appropriate education.

(d) Filing an action for injunctive relief against a school district.

(e) Joining with parents in legal action against a school district.

(f) Taking action to withdraw the commission of the officer responsible for administering the school district.

Commonwealth of Pennsylvania Department of Education, Basic

Education Circular 10-94 (April, 1994).

229. Despite the clear enforcement authority granted the Secretary by state law, PDE defendants take the position that they are powerless to enforce compliance with the guarantees of IDEA by withholding state funds from local school districts. They have not withheld federal funds on the ground that federal dollars flow directly to Intermediate Units (IUs) rather than to the local school districts, unlike state special education funds which flow to the school districts.

230. Although PDE plainly has the authority to bring suit against school districts that fail to meet federal and state requirements, it has never done so.

231. PDE lacks policies and procedures that make state education funding contingent on plan eligibility and compliance. The disapproval of a school district's special education plan or personnel development plan does not result in the withholding of funds by PDE.

232. PDE officials state that they are powerless to enforce corrective actions in response to complaint investigations or monitoring reports.

233. PDE has failed adequately to discharge its responsibility to provide general supervision over programs providing education and related services to students with disabilities in Pennsylvania. Specifically, PDE has failed to discharge its duty to monitor educational programs; to review and approve LEA applications; to manage complaints; to provide an adequate system of due process and procedural safeguards; to provide protection in evaluation procedures; to assure adequate individualized education programs; and to assure placement in the most integrated setting appropriate

to the child's needs.

234. PDE has failed to adopt and use proper methods of monitoring local school districts to assure that they are carrying out their obligations under IDEA, as required by 20 U.S.C. § 1232d(b)(3)(A) and (E). Further, PDE has failed to correct deficiencies even when they are identified by the monitoring process.

235. PDE discontinued its comprehensive monitoring reviews in 1988 and resumed them only recently and in a limited fashion. From 1988 to 1991, PDE conducted no monitoring of special education programs in Pennsylvania. In 1991, PDE developed a monitoring system that it used to survey six agencies, but it abandoned it when it determined that the system produced no useful information.

236. In October, 1992, PDE began to implement a new monitoring system. However, PDE is able to monitor only about 30 education agencies a year; at this rate, it will take PDE 16 years to monitor every public education agency in Pennsylvania. Further, corrective actions to remedy deficiencies identified by PDE through the new monitoring process have not been implemented.

237. PDE has failed to monitor local school districts to determine whether placement in the least restrictive environment is being implemented with the use of supplementary aids and services. PDE has not collected information to determine whether students are removed from the regular education environment, or from their neighborhood school, based on educational need or upon such non-educational reasons as the unavailability of programs and resources, category of disability, configuration of the educational service delivery system, and lack of teacher training.

238. Adequate evaluation and education planning are essential

to effective inclusive education. Without proper, individualized education planning and goal setting, an IEP team cannot design the accommodations necessary for participation in regular classroom.

239. PDE has failed to require, as part of the required multidisciplinary evaluation (MDE) process, a specific listing of recommendations concerning appropriate specially designed instruction and accommodation necessary for participation in a regular classroom.

240. PDE has failed to require adequate individualized education programs for students with disabilities who are, or could be, educated in regular classes with supplementary aids and services. Missing from many IEPs are such essential components as present levels of performance, annual goals and measurable short-term objectives. Without adequate individualized planning, a disabled child's unique educational needs cannot be met nor can success or failure be measured.

241. PDE has failed to ensure that each child's IEP contains a statement of the specific special education and related services to be provided and the extent of participation in regular education. PDE does not adequately monitor the school districts' implementation of this requirement and fails to identify incomplete or conflicting information about the extent of the student's participation in regular education.

242. Some school districts' IEPs list as "participation in regular education," time spent by students in classes composed entirely of students with disabilities but taught by a regular education teacher.

243. PDE has failed to ensure that each student with a disability receives the kind and amount of related services that

are required to assist the child to benefit from special education, as required by 34 C.F.R. §§300.300, 300.16(a), 300.17(a) and 300.350.

244. Many school districts in Pennsylvania categorically refuse to provide psychotherapy as a related service. The unavailability of psychological services denies many students the support they need to succeed in regular classes and results in unnecessary and harmful segregation in separate classes for students labelled "socially and emotionally disturbed." Even when a child is determined to need psychological counseling, the school makes available only the services of a guidance counselor untrained in psychotherapy, or makes the parents provide the service at their own expense. In many school districts, school psychologists provide no direct psychological services to students; their work consists primarily of administering standardized tests to establish and maintain eligibility for special education.

245. PDE has failed to ensure that each student fourteen or over has an effective individual transition plan.

246. PDE has failed to ensure that complaints that a public agency has violated a requirement of IDEA be investigated and resolved within 60 calendar days of filing the complaint unless exceptional circumstances exist, as required by 34 C.F.R. § 300.661(a). Of the 512 complaints filed during the two-year period from January 1, 1991 through December 31, 1992, PDE failed to investigate and resolve the complaints within 60 calendar days in 168 cases despite the absence of exceptional circumstances.

247. PDE has failed to take swift and effective corrective action when presented with complaints that students with

disabilities are improperly excluded from regular classroom instruction and that IEPs are procedurally and substantively inappropriate or are not being implemented in the regular classroom.

248. The system of procedural safeguards operated by the defendants is inadequate to safeguard the right of students with disabilities to receive supplementary aids and services in regular classes. Pennsylvania has a two-tier system of procedural safeguards: impartial due process hearings are conducted by a hearing officer at the local school district level, and hearing officer decisions may be appealed to an appellate hearing panel at the state level. Many hearing officers are employees of school districts and intermediate units or professionals who work under contract with those entities. All too often, they are products of the same system as the school district personnel whose actions they are called upon to review and share that system's lack of knowledge of inclusive practices.

249. PDE has no method for determining whether due process hearing decisions are implemented unless a dissatisfied party files a formal complaint with the State.

250. "Quality education prepares students to assume responsible adult roles as citizens, family members, workers, and life-long learners by attending to their intellectual, developmental, and social needs." 22 PA.CODE § 5.201(c). As a result of defendants' failure to assure that students with disabilities have access to a quality education in regular class with supplementary aids and services, students with disabilities in Pennsylvania leave school ill-prepared for responsible adulthood.

251. The practice of delivering special education services

only in separate settings is expensive in human costs. As PDE defendants have recognized, among special education students, "[d]ropout rates are high. Special education students are often stigmatized. And, educated in homogeneous settings, neither they nor their non-disabled peers are prepared to cope with a world that daily becomes more diverse." Pennsylvania Department of Education, Bureau of Special Education, Quality Education Initiatives.

252. Not only children with disabilities but also their parents, siblings and peers without disabilities are harmed by poor educational practices and unnecessary separation between regular and special education. As a result of defendants' unlawful policies and practices, many students with disabilities in Pennsylvania suffer life-long harm, including failure to learn academic, functional, social and communication skills. Students who could have graduated with a regular diploma are denied the opportunity to do so. Students are denied the opportunity to form friendships with students who do not have disabilities. For many students with disabilities, the failure of timely intervention means the opportunity for effective learning is lost forever.

Claims

Count I: Individual with Disabilities Education Act.

253. PDE defendants have violated the rights of plaintiffs as secured by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1412(5)(B), 1414 (a)(1)(C)(iv), and 34 C.F.R. §§ 300.550-300.556, by:

(a) Failing to develop policies that are binding on local school districts, monitor the extent to which students with disabilities receive instruction and accommodation in regular classrooms and taking action that is necessary and appropriate

to effectively implement the federal mandate that education in regular classrooms with supplementary aids and services be available as a placement option.

(b) Permitting local school districts to continue the practice of denying students with disabilities access to specially designed instruction and related services in regular classrooms, based on availability of services, extent or nature of the disability, configuration of the service delivery system, lack of teacher training, lack of availability of space and other considerations that are unrelated to the needs of the child, thus violating 20 U.S.C. § 1401 et seq.

(c) Failing to train hearing officers and state review panel members and to monitor their activities, thus failing to ensure fair and impartial due process proceedings in violation of 20 U.S.C. § 1415(a) and 34 C.F.R. § 300.501.

254. PDE defendants have violated 20 U.S.C. §§ 1414(a)(1)(C)(i), 1413(a)(3) and 34 C.F.R. § 300.380(c), by failing to carry out a program of comprehensive personnel development to train regular and special education personnel in promising practices in inclusive education and the provision of supplementary aids and services in regular classrooms.

Count II: Americans With Disabilities Act

255. Defendants have violated the rights of plaintiffs secured by the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and regulations promulgated pursuant thereto, by:

(a) Denying plaintiffs and the class the opportunity to participate in and benefit from regular education services, including academic and nonacademic services and school

activities.

(b) Failing to adapt and modify regular classroom activities to meet the individual needs of students with disabilities.

(c) Failing to provide students with disabilities an opportunity to participate in and benefit from their services that is equal to the opportunity afforded students without disabilities.

(d) Failing to provide students with disabilities with educational and other services that are as effective as the services provided other students.

(e) Providing different and separate services to students with and without disabilities, for reasons that have to do with administrative convenience rather than the educational needs of the child.

(f) Denying plaintiffs and the class the benefits of federally assisted educational programs on the basis of the severity of their disabilities.

(g) Segregating students with disabilities on the basis of their physical, behavioral or medical disabilities.

(h) Providing federally assisted educational and non-educational services to class members only in segregated settings.

(i) Aiding and perpetuating discrimination against class members in federally-funded programs because of the severity of their retardation and their physical disabilities.

(j) Limiting disabled students's enjoyment of the right and opportunity to receive a public education.

(k) Failing to provide specialized instruction,

adaptations and accommodations in the regular classroom.

(1) Failing and refusing to assign students to regular educational programs with supplementary aids and services when they could benefit from those programs.

Count III: Rehabilitation Act.

256. Defendants have violated the rights of plaintiffs secured by Sections 100 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 720 and 794, and regulations promulgated pursuant thereto, 45 C.F.R. parts 84 and 1361, by:

(a) Denying plaintiffs and the class the opportunity to participate in and benefit from regular education services, including academic and nonacademic services and school activities.

(b) Failing to adapt and modify regular classroom activities to meet the individual needs of students with disabilities.

(c) Failing to provide students with disabilities an opportunity to participate in and benefit from their services that is equal to the opportunity afforded students without disabilities.

(d) Failing to provide students with disabilities with educational and other services that are as effective as the services provided other students.

(e) Providing different and separate services to students with and without disabilities, for reasons that have to do with administrative convenience rather than the educational needs of the child.

(f) Denying plaintiffs and the class the benefits of federally assisted educational programs on the basis of the

severity of their disabilities.

(g) Segregating students with disabilities on the basis of their physical, behavioral or medical disabilities.

(h) Providing federally assisted educational and non-educational services to class members only in segregated settings.

(i) Aiding and perpetuating discrimination against class members in federally-funded programs because of the severity of their retardation and their physical disabilities.

(j) Limiting disabled students's enjoyment of the right and opportunity to receive a public education.

(k) Failing to provide specialized instruction, adaptations and accommodations in the regular classroom.

(l) Failing and refusing to assign students to regular educational programs with supplementary aids and services when they could benefit from those programs.

Relief

WHEREFORE, the plaintiffs respectfully request the court to order the following relief:

1. Preliminary and permanently enjoin PDE to carry out a program of comprehensive personnel development to train regular and special education personnel in promising educational practices for the provision of supplementary aids and services to students with disabilities in regular classes.

2. Preliminarily and permanently enjoin PDE to produce mandated procedures for the production of MDE reports that will include specific recommendations concerning specially designed instruction and accommodations.

3. Preliminarily and permanently enjoin PDE defendants to

determine whether each local school district is affording class members the opportunity to receive specialized instruction and related services in regular classes with all needed adaptations and modifications.

4. Preliminarily and permanently enjoin PDE defendants to determine whether local school districts are improperly refusing to provide specialized instruction and supplementary aids and services in regular classrooms, and to insure that prompt and effective corrective action is taken.

5. Preliminarily and permanently enjoin PDE defendants to determine whether school districts are improperly placing class members in regular classes without attempting to determine the specialized instruction, accommodations and modifications needed to provide that child with a free appropriate public education;

6. Preliminarily and permanently enjoin PDE defendants to determine whether school districts are failing to provide students with disabilities in regular classes with the specialized instruction, accommodations and modifications contained in their IEPs;

7. Preliminarily and permanently enjoin PDE defendants to determine whether local school districts are improperly removing class members from the regular classroom environment without considering the specialized instruction and supplementary aids and services that could enable the student to be satisfactorily educated in the regular classroom environment, and to insure that prompt and effective corrective action is taken.

8. Preliminarily and permanently enjoin PDE defendants to determine whether local school districts are improperly failing to provide supplementary aids and services, including adaptations and

modifications of regular classroom activities, that could enable the student to be satisfactorily educated in the regular classroom environment, and to insure that prompt and effective corrective action is taken.

9. Preliminarily and permanent enjoin PDE defendants to insure that each plaintiff and member of the plaintiff class receives special education in a regular classroom to the maximum extent appropriate, and that removal of plaintiffs from the regular classroom occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

10. Preliminarily and permanently enjoin PDE defendants to submit a plan for court approval that specifies the program of comprehensive personnel development they will carry out, and the monitoring and enforcement activities that they will conduct, to insure that students with disabilities are afforded the opportunity to receive specialized instruction and related services in regular classrooms with all needed supplementary aids and services.

11. Preliminarily and permanently enjoin PDE defendants to submit a plan for court approval which specifies the preservice and inservice training and oversight of hearing officers they will provide to ensure that families requesting regular classroom placement are given a full and fair opportunity to obtain such placements.

12. Preliminarily and permanently enjoin PDE defendants to submit a plan for court approval that describes the actions they will take to insure that local school districts offer the classroom accommodations and modifications needed for the appropriate education of students with disabilities in regular classes.

13. Award such other relief as the court deems appropriate, including compensatory education and tuition reimbursement for individual plaintiffs and members of the class.

Respectfully submitted,

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