

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

Y.S., a minor, by his father, :
YIN S., and YIN S. and LIM C.,

S.C., by her father, POK C., :
and POK C.,

P.K., by her father, ANG K., :
and ANG K.,

Individually and on behalf of :
all others similarly situated,

Plaintiffs,

v. : C.A. No. 85-6924

SCHOOL DISTRICT OF PHILADELPHIA, :

Defendant.

AMENDED COMPLAINT - CLASS ACTION

I. INTRODUCTION

1. This class action is filed on behalf of Asian students in the Philadelphia School District and their parents. The complaint alleges that the School District has failed to take sufficient steps to address the problems resulting from these students' and parents' limited proficiency in English. As a result, plaintiff students are without adequate services in such areas as school counseling, English language and/or bilingual

instruction, and special education; and plaintiff parents are denied meaningful notice and an opportunity to be heard with respect to decisions about their children's education.

II. JURISDICTION

2. The jurisdiction of this Court is based upon 28 U.S.C. §1331, in that this action arises under the Constitution and laws of the United States; 28 U.S.C. §1343(a)(3), in that this action seeks redress of deprivations of rights secured by the Constitution of the United States and federal laws providing for equal rights; 20 U.S.C. §1708, in that this action seeks to redress the denial of equal educational opportunity; and 20 U.S.C. §1415, in that this action seeks to redress violations of the Education of the Handicapped Act. Declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202.

III. PARTIES

3. Plaintiff Y.S. is a 16-year-old boy. He brings this action by his father, Yin S., and his mother, Lim C. All reside in Philadelphia, PA.

4. Mr. S. and Ms. C. are also plaintiffs herein.

5. Plaintiff S.C. is a 19-year-old woman. She brings this action by her father, Pok C. Both reside in Philadelphia, PA.

6. Mr. C. is also a plaintiff herein.

7. Plaintiff P.K. is a 20-year-old woman. She brings this action by her stepfather and next friend, Ang K. Both reside in Philadelphia, PA.

8. Mr. K. is also a plaintiff herein.

9. Defendant School District of Philadelphia is a public school district within the Commonwealth of Pennsylvania, organized pursuant to Article II of the Pennsylvania School Code, 24 P.S. §2-201 et seq. It is also a "local education agency" within the meaning of the Education of the Handicapped Act, 20 U.S.C. §1401 et seq.

IV. CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action on behalf of themselves and all those similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on the grounds that defendant has acted and refused to act on grounds generally applicable to the named and class plaintiffs, making appropriate declaratory and injunctive relief as to the class as a whole. Plaintiffs seek to represent both a class and a subclass, as defined below.

11. The class represented by the named plaintiffs is composed of all Asian students of limited English proficiency who are enrolled in the School District of Philadelphia; and all Asian parents or guardians of limited English proficiency whose children are enrolled in the School District of Philadelphia.

12. The subclass represented by the named plaintiffs is composed of all students who are members of the class and who are handicapped or thought to be handicapped; and all parents and guardians who are members of the class and whose children are handicapped or thought to be handicapped.

13. On information and belief, approximately 5000 students of Asian descent live in Philadelphia and are enrolled in the School District. At least one thousand of these students are refugees who came to the United States from Asia during the past ten years and were resettled in Philadelphia by American social service agencies. Most of these students live with their parents or guardians. Moreover, the native languages of most of these students and their parents or guardians are Cambodian, Vietnamese, Lao and Chinese. Thus, the class represented by the named plaintiffs is so numerous that joinder of all members is impracticable. More precise information as to the size of the class is currently available only to defendant.

14. On information and belief, at least 6% of the total student population of the School District is classified as handicapped. Assuming that approximately the same proportion of

Asian students suffer from handicapping conditions, the subclass is composed of at least 100 students and their parents. Thus, the subclass is so numerous that joinder of all members is impracticable. More precise information as to the size of the subclass is currently available only to defendant.

15. There are questions of law and fact in common between the named plaintiffs and the members of the class and subclass that they seek to represent, e.g., the question of whether defendant has discriminated against class members in the provision of services and the question of whether defendant has implemented the mandates of the special education laws with respect to the subclass.

16. The claims of the named plaintiffs are essentially identical to the claims of the class and subclass that they seek to represent. Therefore, their claims are typical of those of other class and subclass members. Moreover, the named plaintiffs have no interests which are in conflict with or inimical to those of the members of the class or subclass.

17. The named plaintiffs will adequately represent and protect the interests of the class and subclass. Counsel for the named plaintiffs are experienced in federal class action litigation and will vigorously pursue this action in the interests of the class and subclass.

V. FACTUAL ALLEGATIONS

Plaintiff Y.S.

18. Y.S. is a Cambodian refugee who was resettled in Philadelphia, together with his parents and younger brothers and sister, in 1982.

19. At the time of their arrival in Philadelphia, neither Y. nor his family spoke any English. As of today, Y. and his family -- with the exception of Y.'s five- and six-year-old brothers -- still speak little or no English.

20. Y. has been enrolled in public schools within the School District of Philadelphia from September, 1982, to the present.

21. Defendant School District is a recipient of federal financial assistance.

22. Y. was first assigned, for the 1982-83 school year, to the Roosevelt Middle School. In September, 1983, he was transferred to the Ada Lewis Middle School; two months later, he was again transferred, this time to the Shawmont Elementary School, which he attended through June, 1984.

23. Each student of limited English proficiency who is enrolled in public school in Pennsylvania is entitled to a program for the purpose of facilitating English proficiency. This entitlement arises from 22 Pa. Code §5.6(b) and from federal sources including 42 U.S.C. §2000d and 20 U.S.C. §1703(f).

24. During part or all of the period from September, 1982, through June, 1984, the District provided Y. with a program in "English as a Second Language" ("ESL"). However, Y.'s ESL program consisted of only a limited period of instruction per day.

25. None of Y.'s ESL teachers was able to speak Cambodian. Thus, Y.'s ESL classes were taught exclusively in English.

26. For the remainder of his school day, Y. was assigned by the District to regular English-language classes such as mathematics, history, and art.

27. Thus, Y.'s instruction has been entirely in English from the first day of his enrollment in the Philadelphia public schools.

28. In part because he has received no assistance from anyone who could speak his native language, Y. has been unable to make substantial progress in school.

29. Thus, the program provided by the District to address Y.'s limited English proficiency has been inadequate to meet his needs.

30. The District has never afforded Y. or his parents an opportunity to seek review of its decisions concerning the program provided to Y. as a result of his limited English proficiency.

31. The District has never systematically evaluated Y.'s school performance, nor has it regularly graded him in his academic subjects. Indeed, the District lacks the bilingual personnel and testing materials and procedures that would be necessary in order to measure Y.'s achievement.

32. Although Y. has always been assigned to a school counselor, the District has never taken action to require that his counselor spoke Cambodian or had access to an interpreter. Thus, Y.'s counselors have been unable to communicate with Y. or his parents concerning his progress, or lack thereof, in school.

33. In the fall of 1984, the School District decided to test Y. for the possible presence of a handicapping condition.

34. The District thereupon presented Y.'s parents with a "Request for Permission to Evaluate" form. The form was written in English. No interpreter was available to explain its contents to the parents in their native language.

35. Mr. S., nevertheless, signed the "Request for Permission to Evaluate," and a psychological evaluation was thereafter administered to Y.

36. The psychological evaluation was performed by an English-speaking psychologist in the employ of the District, with the assistance of an interpreter.

37. In performing the evaluation, the psychologist utilized a test instrument developed for English-speaking individuals.

38. Based upon the results of this test, the psychologist concluded that Y. was mentally retarded.

39. Pursuant to 22 Pa. Code §341.11(e), an evaluation of a student for special education must include information from sources other than ability or achievement tests, including information from parents concerning the student's physical condition, sociocultural background, and adaptive behavior in home and school. However, because the District did not arrange for the availability of an interpreter, no such information was obtained with respect to Y.

40. Similarly, the District did not arrange for the availability of an interpreter to assist in the performance of an educational evaluation of Y. Accordingly, the School District performed no systematic evaluation of Y.'s knowledge or of his educational achievement levels.

41. The School District did perform a hearing screening, which revealed that Y. had a significant hearing loss. Based upon the results of this screening, a School District nurse recommended that Y. receive an audiological evaluation. However, the District did not conduct such an evaluation.

42. The School District did not consult Y.'s parents concerning their son's lack of progress, the findings of the psychologist or the results of the hearing screening.

43. The District presented Y.'s parents with no written notice indicating that Y. had been found to be handicapped.

44. In September, 1985, the School District developed a "Notice of Recommended Assignment" and an "Individualized Education Program" ("IEP") for Y.

45. The Notice of Recommended Assignment and IEP proposed that Y. be placed in a special education class as a mentally retarded student. The IEP also provided that Y. would receive English-as-a-Second-Language instruction "if administratively feasible."

46. The Notice of Recommended Assignment and IEP were written entirely in English.

47. The IEP was a pre-printed document containing little or no information relevant to Y.'s particular problems or needs. It contained no description of Y.'s present educational levels, few or no meaningful instructional objectives, no specific description of the special education services to be provided to Y., and no objective criteria or evaluation procedures for determining whether the instructional objectives of the program were being achieved.

48. The District employee(s) who wrote Y.'s "Individualized Education Program" had never met Y. or his family.

49. The School District met with Y.'s parents to request that they approve the Notice of Recommended Assignment and IEP. Because no interpreter was available, no meaningful discussion was possible. However, the School District had Y.'s 6-year-old brother assist in explaining the documents to Y.'s parents.

50. Mr. S. approved the Notice of Recommended Assignment and IEP.

51. The District placed Y. in a special education class in Gratz High School, which he attended until March, 1986.

52. The School District determined that it would not be "administratively feasible" to provide Y. with English-as-a-Second-Language instruction. Accordingly, his program at Gratz included neither ESL nor bilingual instruction.

53. The District did not notify Y.'s parents of its decision to discontinue Y.'s ESL program, nor did it afford them an opportunity for review of this decision.

54. All of Y.'s instruction at Gratz was in English, which he could not understand.

55. No Cambodian-speaking teachers, aides or interpreters were available at Gratz High School.

56. The school counselor at Gratz High School was unable to communicate with Y. or with his parents.

57. On at least one occasion during Y.'s placement at Gratz, a medical issue arose concerning Y. which, under normal circumstances, would have been the subject of communication between the school nurse and Y.'s parents. However, because of the absence of an interpreter, no such communication occurred.

58. Y. made no significant progress while at Gratz.

59. In March, 1985, subsequent to the filing of this litigation, Y. was transferred to Olney High School ("Olney").

60. In April, 1986, Y. was evaluated by an English-speaking school psychologist with the assistance of an individual who is bilingual in English and Cambodian.

61. Y. completed the 1985-86 school year at Olney.

62. While at Olney, Y. received no instruction or other assistance from any adult who could speak his language.

63. Y. received ESL instruction while at Olney. However, the instruction was at a level that was too advanced to enable him to progress.

64. Y. made no progress while at Olney during the latter months of the 1985-86 school year.

65. For the 1986-87 school year, the District has proposed to assign Y. to a class for "trainable mentally retarded" students at Olney.

Plaintiff S.C.

66. Plaintiff S.C. is a Cambodian refugee who was resettled in Philadelphia, together with her father and older sister, in 1984.

67. At the time of their arrival in Philadelphia, neither S.C. nor any member of her family spoke any English. As of today, S. and her family still speak little or no English.

68. S.'s father is elderly, has medical problems, and has difficulty finding his way around the city. S.'s older sister functions as her primary caretaker.

69. In September, 1984, S. was enrolled at Olney High School ("Olney") in the Philadelphia School District.

70. S.'s roster at Olney consisted of ESL, physical education and health.

71. These classes were conducted entirely in English.

72. While at Olney, S. received no instruction or assistance from any adult who could speak her language.

73. S. was unresponsive in her classes. Her teachers did not know how to get her to respond and, after a period, stopped trying to do so.

74. S. made no progress in ESL or in her other courses.

75. S.'s 1984-85 report card consists of 23 F's, 3 D's, one C, and (apparently through an error) one A.

76. S. shows clear signs of a learning problem. For example, she speaks very little and very slowly in her own language, and responds only to relatively simple commands. She often appears withdrawn, even when around persons who speak her language. She has trouble finding her way from place to place. She also has difficulty with tasks that persons of her age normally perform with ease, such as dressing herself.

77. The District took no action to contact S.'s father or sister to discuss her learning problems, or to evaluate her educational needs.

78. The District's failure to communicate with S. or her family or to evaluate S.'s educational needs was due, at least in part, to the fact that Olney had no adult readily available to it who could speak Cambodian.

79. In the latter part of the 1984-85 school year, S.'s family moved to a new address.

80. Although the family's new address was still within the attendance area for Olney High School, S. was no longer able to find her way to the school.

81. S.'s older sister helped her get to and from school for a period of time. However, the sister then began to attend classes herself at a different location and was unable to assist S. Accordingly, S.'s attendance worsened toward the end of 1984-85.

82. The District made no attempt to discover why S.'s attendance was decreasing, again apparently because of the lack of a readily available interpreter to communicate with S. and/or her family.

83. One of S.'s teachers informed a classmate, in substance, that it did not matter whether or not S. attended school since she was making no progress anyway.

84. When school began again in the fall of 1985, S.'s older sister was working and was unable to help S. get to school. S. continued to have difficulty in finding her way and succeeded in arriving at school only a few times. Eventually, she stopped trying to attend.

85. S. attended school for a few days in the fall of 1985. However, her sister was working at that time and was unable to assist her in getting to school. In the fall of 1985, she stopped attending altogether.

86. In October, 1985, Olney dropped S. from its rolls due to her non-attendance.

87. Prior to dropping S. from its rolls, the District took no action to contact her father, Mr. C., or her sister to discuss her difficulties in school or her attendance problems.

88. During the entire period of S.'s enrollment in the School District, the District failed to perform any meaningful evaluation of S.'s educational levels or ability. This was in part because the District lacks the bilingual personnel and testing materials and procedures that would be necessary in order to measure S.'s educational levels and achievement.

89. Likewise, the District made no attempt to evaluate S.'s psychological status. This was in part because the District lacks the personnel and testing materials and procedures that would be necessary to conduct such an evaluation.

90. The District has never afforded S. or her father or sister an opportunity to seek review of its decisions concerning the program provided to S. as a result of her limited English proficiency.

91. S.'s school counselors do not speak Cambodian and do not have ready access to an interpreter or bilingual aide. Thus, they have been unable to communicate with S. or with her family.

92. As a result, neither S. nor her family has received meaningful service from school counselors.

93. S. has remained at home, without receiving any instruction, since October, 1985.

C. Plaintiff P.K.

94. P.K. is a Cambodian refugee who was resettled in Philadelphia, together with her parents and siblings, in 1983.

95. At the time of their arrival in Philadelphia, neither P.K. nor any member of her family spoke any English. As of today, P. and her parents still speak very little English.

96. In September, 1984, P. was enrolled at University City High School ("University City") in the Philadelphia School District. She has continued to be a student at University City since that time.

97. For the 1984-85 school year, P. was assigned to tenth grade. Her roster included classes in English as a Second Language ("ESL"), world history, mathematics, physical education and health.

98. P.'s classes during the 1984-85 school year were taught exclusively in English.

99. P. was unable to understand most of the instruction that she received during the 1984-85 school year.

100. P. received no instruction during 1984-85 from anyone who could speak Cambodian.

101. In the fall of 1984, P. was in an automobile accident. Following the accident, she had frequent medical complaints and a significant number of absences from school.

102. There have also been indications at school that P. may have psychological problems.

103. P. did not make substantial progress in 1984-85 and, as a result, failed tenth grade.

104. P. repeated tenth grade during 1985-86. Her roster included classes in American history, mathematics, ESL, health and physical education.

105. During the 1985-86 school year, P.'s ESL class met for three periods per day.

106. During 1985-86, as during the previous school year, P. received no instruction from anyone who could speak Cambodian.

107. The services provided to P. during the 1985-86 school year, i.e., three periods of ESL per day plus other English-language classes, were inadequate to meet her needs.

108. As a result, P's grades for the 1985-86 school year were mostly E's and F's.

109. Despite P.'s almost total lack of progress, her frequent absences, and the indications that she might have psychological problems, District personnel have never contacted P.'s parents to discuss her educational status.

110. At least in part, the District's failure to contact P.'s parents results from the fact that University City does not have ready access to bilingual personnel who could assist with such contacts.

111. The District has conducted no systematic evaluation of P.'s educational levels or ability. This is in part because the District lacks the bilingual personnel and testing materials and procedures that would be necessary in order to measure P.'s educational levels and achievement.

112. The District has made no attempt to evaluate P.'s psychological status. This is in part because the District lacks the personnel and testing materials and procedures that would be necessary to conduct such an evaluation.

113. The District has never afforded P. or her parents an opportunity to seek review of its decisions concerning the program provided to P. as a result of her limited English proficiency.

114. P.'s school counselors do not speak Cambodian and do not have ready access to an interpreter or bilingual aide. Thus, they have been unable to communicate with P. or with her family.

115. As a result, neither P. nor her parents have received meaningful service from school counselors.

116. The school nurse has also had difficulty communicating with P. because no interpreter was readily available.

117. In June, 1986, P.'s attorney contacted the head counselor at University City to inquire about the possibility of arranging a psychoeducational evaluation for P. The counselor responded that P.'s parents could come to the school in the fall and make such a request if they wished, but that they should bring their own interpreter.

118. The District has taken no action, and currently has no plan to take any action, that might assist it to understand the reasons for P's poor performance in school; to facilitate communication with P. and her parents; or in any other way to change the existing situation.

Class Allegations

119. It is the policy and practice of defendant District to provide no more than three periods per day of ESL instruction to "beginning level" students in the English language; no more than two periods per day to "intermediate level" students; and no more than one period per day to "advanced level" students.

120. It is the policy and practice of defendant District to place class members in "content area" classes taught in English during those instructional periods in which they are not receiving ESL instruction.

121. Some class members are unable, because of their limited English proficiency, to understand some or all of the instruction provided to them in "content area" classes.

122. It is the practice of the School District not to provide Asian students with instruction in their own language.

123. In contrast to this practice, some non-Asian students within the District are provided with "transitional bilingual instruction." According to District policies, this means that while the child is learning English, he or she also receives "content area" instruction, i.e., instruction in such subjects as mathematics and social science, in the native language. The purpose of the program is to enable the child to progress in "content areas" at the same time as he or she is learning

English. The program is termed "transitional" because, as the child becomes more fluent in English, he or she receives more and more instruction in that language.

124. Some class members are unable, because of their limited English proficiency, to make substantial progress in "content area" classes without some amount of instruction or assistance in their native languages.

125. Defendant School District has failed to provide the minor class members with sufficient instruction in English and/or bilingual instruction to permit them to participate fully and equally in the District's educational program.

126. Defendant School District has failed to afford minor plaintiffs and their parents notice and an opportunity to be heard concerning the nature and extent of the program to be provided each minor plaintiff on account of his or her limited English proficiency. Defendant has also failed to provide such protections prior to changing or terminating a student's program.

127. Each student enrolled in the School District is assigned to a school counselor. The responsibilities of school counselors include, inter alia, assisting students with learning and adjustment problems, referring students to special programs and services that they may require, and maintaining communication with parents. However, defendant has failed to obtain bilingual

staff and/or interpreters to the extent required to insure that counselors can communicate readily with minor and parent plaintiffs.

128. Similarly, the responsibilities of teaching staff and other School District personnel include communicating with students and their families. However, defendant School District has failed to obtain bilingual teaching staff and/or interpreters to the extent required to insure that personnel can communicate readily with minor and parent plaintiffs.

129. Defendant School District has failed to provide student class members with testing and evaluation services delivered, where necessary, in their native languages. With respect to the subclass, defendant has failed to provide non-discriminatory testing and evaluation services which are adequate to determine whether a handicap is present and what special education services, if any, must be provided.

130. Defendant School District has failed to translate its written notices and forms into the native languages of the plaintiff class. With respect to the subclass, defendant has failed to translate its notices and forms pertaining to special education into the native languages of the plaintiff subclass.

131. Defendant School District has failed to obtain informed parental consent to proposed decisions concerning special education matters with respect to the plaintiff subclass.

132. Each of the acts and omissions of defendant School District alleged in this Complaint was performed knowingly and intentionally.

133. For these reasons, plaintiffs are not receiving adequate educational services and are suffering irreparable harm.

134. Plaintiffs have no adequate remedy at law.

VI. CAUSES OF ACTION

Class Claims

COUNT I

Defendant's failure to provide the minor plaintiffs with adequate instruction in English, and/or bilingual instruction, violates:

(a) the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, as enforced via 42 U.S.C. §1983;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100;

(c) the Equal Educational Opportunities Act, 20 U.S.C. §1703(f);

(d) 22 Pa. Code §5.6(b).

COUNT 2

Under federal and state law, minor plaintiffs are entitled to a program of English-as-a-Second-Language and/or bilingual instruction. Defendant's failure to afford minor plaintiffs and their parents notice and an opportunity to be heard concerning the nature and extent of the program to be provided, and defendant's failure to provide such protections before a student's program is changed or terminated, violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, as enforced via 42 U.S.C. §1983.

COUNT 3

Defendant's failure to take adequate steps to insure that school counselors, teachers and other personnel can communicate readily with minor and parent plaintiffs violates:

(a) the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, as enforced via 42 U.S.C. §1983;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100;

(c) the Equal Educational Opportunities Act, 20 U.S.C. §1703(f).

COUNT 4

Defendant's failure to provide non-discriminatory testing and evaluation services to minor plaintiffs violates:

(a) the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, as enforced via 42 U.S.C. §1983;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100;

(c) the Equal Educational Opportunities Act, 20 U.S.C. §1703(f).

COUNT 5

Defendant's failure to insure that written notices addressed to the minor and parent plaintiffs are translated, where necessary, into their native languages violates:

(a) the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, as enforced via 42 U.S.C. §1983;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100;

(c) the Equal Educational Opportunities Act, 20 U.S.C. §1703(f).

Subclass Claims

COUNT 6

Defendant's failure to insure that non-discriminatory testing and evaluation services are available in the native languages of the minor plaintiffs who are members of the subclass violates:

(a) the Education of the Handicapped Act, 20 U.S.C. §1401 et seq., and implementing regulations, 34 C.F.R. §§300.532-533; and 42 U.S.C. §1983.

(b) 22 Pa. Code §341.13.

COUNT 7

Defendant's failure to insure that the parent plaintiffs who are members of the subclass receive written notice, in their native language, of the School District's determinations and proposed actions with respect to special education violates:

(a) the Education of the Handicapped Act, 20 U.S.C. §1401 et seq., and implementing regulations. 34 C.F.R. §§300.504-505; and 42 U.S.C. §1983.

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100.

COUNT 8

Defendant's failure to insure that informed parental consent is obtained for proposed actions with respect to the members of the plaintiff subclass violates the Education of the Handicapped Act, 20 U.S.C. §1401 et seq., and implementing regulations, 34 C.F.R. §§300.504-505; and 42 U.S.C. §1983.

COUNT 9

Defendant's failure to insure that interpreters are present, where required, at meetings concerning the special education needs of the plaintiff subclass violates:

(a) the Education of the Handicapped Act, 20 U.S.C. §1401 et seq., and implementing regulations, 34 C.F.R. §300.345; and 42 U.S.C. §1983;

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations, 34 C.F.R. Part 100.

VII. RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction of this action.

2. Declare that defendant has violated the rights of named and class plaintiffs as set forth above.

3. With respect to named plaintiffs, enter preliminary and permanent injunctions providing that:

(a) Defendant shall arrange for the performance, by independent professionals not employed by the School District, of a full evaluation of each student plaintiff's educational status and needs. The evaluation should cover all areas of the student's educational performance and all areas in which he is suspected to be handicapped, and should be designed and administered so as to be non-discriminatory and to take account of the student's linguistic and cultural background;

(b) If defendant concludes that the student is handicapped, defendant shall develop -- in consultation with the student's parents -- an Individualized Education Program which contains all legally required components;

(c) Defendant shall provide each student with ESL and bilingual instruction to the extent that he requires these services;

(d) Defendant shall offer each student a program of remedial and compensatory education;

(e) Defendant shall provide the student and his/her parents with access to school counseling services, through the provision of bilingual staff and/or interpreters;

(f) Defendant shall insure that bilingual staff and/or interpreters are readily available to assist each student in communicating with all school personnel with whom he or she comes in contact;

(g) Defendant shall arrange for ongoing communication between the student's parents, his/her teachers, and other school staff, through the provision of bilingual staff and/or interpreters;

(h) Defendant shall insure that all documents submitted to the parents are in their native language.

4. With respect to the plaintiff class and subclass, enter preliminary and permanent injunctions providing that Defendants develop, submit to plaintiffs and the Court for approval, and thereafter implement a plan for insuring that:

(a) A complete assessment is made, with the assistance of independent professionals not employed by defendant, of (i) the educational needs of the plaintiff class, and (ii) the extent to which these needs are currently being met;

(b) Each student plaintiff is afforded instruction in English and/or bilingual instruction to the extent required, regardless of whether the student is placed in regular or special education classes;

(c) The "content area" instruction provided to each student, whether in regular or special education, is appropriate to his or her level of English proficiency and includes instruction in his or her native language to the extent necessary;

(d) Each student plaintiff and his or her parents are afforded notice and an opportunity to be heard concerning the program to be provided on account of the student's limited English proficiency; also, notice and an opportunity for hearing are provided before a student's program is changed or terminated;

(e) Procedures are adopted and personnel obtained to enable school counselors, teachers, and other personnel to communicate readily with plaintiffs and their parents;

(f) Non-discriminatory procedures are adopted for testing and evaluation of plaintiffs;

(g) Notices sent to parent plaintiffs are translated into their native languages;

(h) Informed parental consent is obtained with respect to decisions involving the provision of special education services to class members.

5. Grant such other and further relief as may be appropriate.

6. Award plaintiffs their costs and attorney's fees.



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