

(4)

11/7/71

#

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

THE PENNSYLVANIA ASSOCIATION :  
 FOR RETARDED CHILDREN, :  
 NANCY BETH BOWMAN :  
 by her father, Horace Bowman; :  
 LINDA TAUB, :  
 by her father, Allen Taub :  
 CHARLES O'LAUGHLIN, :  
 by his father, Charles :  
 O'Laughlin; :  
 CHRISTOPHER JOHN KELLY, :  
 by his father, JOSEPH KELLY; :  
 MARK MOSER, :  
 by his father, Clark Moser; :  
 WILLIAM REESE, :  
 by his father, Edward Reese; :  
 DAVID TUPI, :  
 by his father, Steven Tupi; :  
 SANDRA LYDARD, :  
 by her mother, Mrs. Douglas :  
 Lydard; :  
 EMERY THOMAS, :  
 by his father, Reginald :  
 Thomas; :  
 WILLIAM WENSTON, :  
 by his father, Robert Wenston; :  
 CINDY MAE HATT, :  
 by her father, Scott Hatt; :  
 RONALD GREEN, :  
 by his mother, Mrs. Mattie :  
 Green; and :  
 GLENN LOWREY, :  
 by his father, Richard Lowrey, :  
 on behalf of themselves and all :  
 others similarly situated, :

19/28  
1 copy  
Charge  
"Schools"

CIVIL ACTION NO.

COMPLAINT - CLASS ACTION

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA, :  
 DAVID H. KURTZMAN, individually and as :  
 Secretary of Education of the :  
 Commonwealth of Pennsylvania; :  
 THE STATE BOARD OF EDUCATION of the :  
 Commonwealth of Pennsylvania; :  
 JOSEPH ADLESTEIN, individually and as :  
 Acting Secretary of Public Welfare :  
 of the Commonwealth of Pennsylvania :



## COMPLAINT

(For preliminary and permanent injunctive relief and declaratory judgment to prevent the denial to plaintiff retarded children, aged six to twenty-one years, of their equal right to education.)

### Jurisdiction

1. The jurisdiction of the Court is invoked under Title 28, U.S.C. Sec. 1343, 42 U.S.C. Secs. 1981 and 1983, and Title 28, U.S.C. Secs. 2201 and 2202, this being an action for declaratory judgment and preliminary and permanent injunctive relief to redress the deprivation under color of state law of rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States.

2. Monetary damages are inadequate and plaintiffs have been suffering and continue to suffer irreparable harm from defendants' actions, policies, and procedures and from the laws complained of herein. Accordingly injunctive relief is necessary.

### Parties

3. The plaintiffs are:

(a) The Pennsylvania Association for Retarded Children, a non-profit corporation created in 1949 and existing under the laws of the Commonwealth of Pennsylvania, with member chapters in 53 of Pennsylvania's 67 counties, whose purpose it is to advance the interests of retarded citizens of Pennsylvania and to secure to them their just share of the resources available to all citizens of the Commonwealth. For twenty years the chapters of the Pennsylvania Association for Retarded Children have conducted programs for the education of retarded children.

(b) Nancy Beth Bowman and Linda Taub, citizens of the U. S. and of the Commonwealth of Pennsylvania, residents of Pennhurst State School and Hospital and retarded children who are presently receiving no education.

(c) Charles O'Laughlin and Christopher John Kelly, citizens of the United States and of the Commonwealth of Pennsylvania and retarded children who have been excluded from public school as "uneducable and untrainable" by defendants under 24 Purd. Stat. Sec. 13-1375 and who are presently receiving no education or are attending a private school wholly or partly at their parents' expense.

(d) Mark Moser, William Reese, David Tupi and Sandra Lydard, citizens of the United States and of the Commonwealth of Pennsylvania and retarded children who have been "excused" from school attendance by defendants as "unable to profit therefrom" under 24 Purd. Stat. Sec. 13-1330(2), and thus refused the right to attend school, and who are presently receiving no education or are attending a private school wholly or partly at their parents' expense.

(e) Emery Thomas and William Wenston, citizens of the United States and of the Commonwealth of Pennsylvania and retarded children over the age of six whose attendance at public school has been postponed by defendants, purportedly under 24 Purd. Stat. Sec. 13-1326, until they are eight years of age and who are presently receiving no education or are

attending a private school wholly or partly at their parents' expense.

(f) Cindy Mae Hatt, Ronald Green and Glenn Lowrey, citizens of the United States and of the Commonwealth of Pennsylvania and retarded children over six years of age who have been refused the right to attend public school under 24 Purd. Stat. Sec. 13-1304 because they have not attained "a mental age of five years" and who are presently receiving no education or are attending a private school wholly or partly at their parents' expense.

(g) All other persons, residents of Pennsylvania, aged six to twenty-one years, who are eligible for free public education except that defendants herein (1) have excluded or (2) excused them from attendance at public schools or (3) have postponed their admission or (4) otherwise have refused to allow them free access to public education because they are retarded.

4. Each of the named plaintiffs herein is of school age; each is a retarded child and would benefit from education; the parents of each elect to have their child enter public school; and, each has been wrongfully denied his right to a free public education because he is retarded.

5. Each of the named plaintiffs herein is a minor child and sues by his parent and next friend, respectively:

Horace Bowman, 1246 Mildred Street, Roslyn, Montgomery County, Pennsylvania; Allen Taub, 6828 E Roosevelt Boulevard, Philadelphia, Pennsylvania; Charles M. O'Laughlin, 3413 Lynwood Drive, West Homestead, Allegheny County, Pennsylvania; Joseph Kelly, 208 Elm Street, Lincoln Park, Reading, Berks County, Pennsylvania; Clark Moser, 813 St. Francis Drive, Broomall, Delaware County, Pennsylvania; Edward Reese, 904 Charles Street, Glenshaw, Allegheny County, Pennsylvania; Steven Tupi, 771 Hazelwood Avenue, Pittsburgh, Pennsylvania; Mrs. Douglas Lydard, 422 North 12th Street, Reading, Berks County, Pennsylvania; Reginald Thomas, 265 South Hirst Street, Philadelphia, Pennsylvania; Robert Wenston, 209 Stratford Avenue, Pittsburgh, Pennsylvania, Scott Hatt, Sinking Springs, R. D. #6, Goglersville, Berks County, Pennsylvania; Mrs. Mattie Green, 453 East Sharpnack Street, Philadelphia, Pennsylvania; and Richard Lowrey, R. D. #1, Forest City, Susquehanna County, Pennsylvania.

6. The defendants are:

(a) The Commonwealth of Pennsylvania which has assumed and has among its primary governmental functions the education of all of Pennsylvania's children.

(b) David H. Kurtzman, Secretary of Education of the Commonwealth of Pennsylvania, and a citizen thereof, who is charged under the Pennsylvania Administrative Code, 71 Purd. Stat. Secs. 66 and 352, with the enforcement, operation and

execution of the provisions of the Pennsylvania Public School Code of 1949 as amended, 24 Purd. Stat. Secs. 1-101 et seq., and, in particular, with approving the certification of a child as "uneducable and untrainable" under 24 Purd. Stat. Sec. 13-1375, with superintending the organization of classes and other arrangements for special education under 24 Purd. Stat. Sec. 13-1372, and, under 24 Purd. Stat. Sec. 13-1372(5), with directly providing proper education and training to exceptional children in school districts where the needs of exceptional children are not being adequately served.

(c) The State Board of Education, which is charged under the Administrative Code, 71 Purd. Stat. Sec. 367, with the adoption of policies and principles and the establishment of standards governing the educational process of the Commonwealth and, in particular, with adopting and prescribing standards for the education and training of all exceptional children under 24 Purd. Stat. Sec. 1372, standards for temporary or permanent exclusion from public schools of children found to be "uneducable and untrainable" under 24 Purd. Stat. Sec. 13-1375, regulations for excusing from compulsory school attendance those unable to profit therefrom under 24 Purd. Stat. Sec. 13-1330(2), standards for refusal to accept beginners who have not attained a mental age of five years under 24 Purd. Stat. Sec. 13-1304.

(d) Joseph Adlstein, Acting Secretary of Public Welfare of the Commonwealth of Pennsylvania and a citizen thereof, who is charged under the Pennsylvania Public Welfare Code, 62 Purd. Stat. Sec. 302, with the supervision of state institutions for the mentally retarded, and with the enforcement, operation and execution of the provisions of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 Purd. Stat. Sec. 4101 et seq., and under the Public School Code, 24 Purd. Stat. Sec. 13-1375, with the care, training, and supervision of children excluded from the public schools as "uneducable and untrainable."

(e) The following named school districts of the Commonwealth of Pennsylvania:

- (i) Abington School District, Montgomery County;
- (ii) Philadelphia School District;
- (iii) Allegheny County School District;
- (iv) West Homestead School District, Allegheny County
- (v) Berks County School District;
- (vi) Governor Mifflin School District, Berks County;
- (vii) Shaler Township School District, Allegheny County;
- (viii) Wilson School District, Berks County;
- (ix) Marple-Newtown School District, Delaware County;



- (x) Pittsburgh School District, Allegheny County;
- (xi) Reading School District, Berks County;
- (xii) Susquehanna County School District;
- (xiii) Mountain-View School District, Susquehanna County;

Each of these school districts is charged under 24 Purd. Stat. Sec. 13-1372(3) with providing, alone or jointly with neighboring school districts, special classes or schools for exceptional children, securing such education or training for them outside the public schools or in special institutions, or teaching them in their homes.

(f) All other school districts of the Commonwealth of Pennsylvania, each of which is similarly charged under 24 Purd. Stat. Sec. 13-1372(3).

#### Class Action Allegations

7. Thirteen named plaintiffs sue on their own behalf and, pursuant to Rule 23 Fed. R.Civ. P. and each portion thereof, on behalf of the class of all persons, residents of Pennsylvania, aged six to twenty-one years, who are eligible for a free public education except that defendants herein (1) have excluded or (2) excused them from attendance at public school or (3) have postponed their admission or (4) otherwise have refused to allow them free access to a public education because they are retarded.

8. The class so defined may number as many as 53,000 persons but the precise number is within the knowledge of defendants and its formulation must await discovery and hearing.

9. The circumstances, age, diagnosis, and attributed intelligence of the named plaintiffs are a fair sampling of the characteristics of retarded children generally, and the named plaintiffs, therefore, adequately represent the class.

10. The defendants have acted to refuse plaintiffs and their class free access to public education on the basis of the laws and regulations, and practices, specified below in this Complaint, which are statewide in their application and by devices which are common throughout the state.

11. The capacity of all retarded children, whatever their attributed intelligence, to benefit from education is the predominate question of fact in this action and is common to all members of the class. The subsidiary questions of fact, specified below in this Complaint, are similarly common to all retarded children.

12. The number of persons in the class, the number of jurisdictions empowered to act with respect to them, albeit each of them responsible to the same Secretary of Education and the same laws, and the low visibility of these crucial actions raise considerable danger of inconsistent or varying adjudications and underscore the desirability of settling in one forum the requirements which shall govern the public education of retarded children.

13. The class of all school districts of the Commonwealth of Pennsylvania, of whom thirteen defendant school districts, varying in location and size, are sued as representative pursuant to Rule 23 Fed R. Civ. P. and each portion thereof, numbers 742, each governed by the same laws and responsible to the same Secretary of Education who is also a defendant herein.

The Non-Education of Nancy Beth Bowman

14. Nancy Beth Bowman, born December 12, 1950, has been assigned an intelligence quotient of approximately 55.

15. From 2-1/2 to 6 years of age, Nancy Beth Bowman at her parents expense attended private school from 9:00 A.M. to 2:00P.M., five days a week at the Chestnut Hill Rehabilitation Center. Later she attended the Day School of the Montgomery County Association of Retarded Children.

16. During this early schooling Nancy Beth Bowman learned the rudiments of reading and counting; she became toilet trained and learned table manners.

17. When Nancy Beth Bowman was eight years of age, the school psychologist of the Abington School District announced that she could not stay in school and recommended long term placement to her parents. Her parents have not been informed by the School District whether she was excluded or excused from the public schools.

18. Since her placement at the Pennhurst State School in 1960, Nancy Beth Bowman has received no educational instruction, nor is any now being provided.

The Non-Education of Linda Taub

19. Linda Taub, born May 12, 1951, is a blind retarded child, assigned an intelligence quotient of approximately 20.

20. From 1956 until the Spring of 1960, Linda Taub attended the Chestnut Hill Rehabilitation Center and the Upsal Day School, private schools, at her parents' expense.

21. For six weeks in the Spring of 1960, she attended a special class in the Philadelphia public schools, but on May 25, 1960, the Superintendent of District Four wrote to her parents excluding her, albeit not under 24 Purd. Stat. Sec. 13-1375, from the schools because she had not "responded" and had toilet training problems.

22. Thereafter, in 1961-62, Linda Taub attended the Awbury School and during 1963-1966 the Upsal Day School, both private schools, at her parents expense.

23. In October, 1966, Linda Taub entered Pennhurst State School and Hospital. For the first fourteen months she was enrolled in a federally funded program for teaching blind and visually handicapped retarded children.

24. Through this and earlier education, Linda Taub has learned to chew, to eat by herself, and has made progress toward toilet-training.

25. On December 29, 1969, Linda Taub was removed from that program by the then Superintendent of Pennhurst and since then she has received no educational instruction, nor is any now being provided.

The Non-Education of Charles O'Laughlin

26. Charles O'Laughlin, born January 16, 1953, has been assigned an intelligence quotient of approximately 30.

27. Charles O'Laughlin attended special classes in the Beaver County School District for two years beginning in the fall of 1959.

28. From 1961 until 1967, at his parents expense, he attended St. Anthony's School for Exceptional Children in Oakmont, Pennsylvania.

29. During the school terms, 1967-69 and 1968-69, Charles O'Laughlin was enrolled in a trainable class at the Mon Valley School of the Allegheny County School District.

30. On September 30, 1969, his parents were informed by letter from a school psychologist that Charles O'Laughlin was excluded from the public schools as "uneducable and untrainable."

31. On October 8, 1969, the exclusion forms were filed with the Department of Education by the local school district.

32. Despite his parents' request for a statement of the reasons for exclusion, no reasons have been stated nor have the parents had an opportunity for a hearing on the exclusion.

33. Despite his parents' request to the West Homestead School District for a tutor for home instruction, no home instruction has been provided.

The Non-Education of Christopher John Kelly

34. Christopher John Kelly, born December 17, 1960, has been assigned an intelligence quotient of approximately 20.

35. From June to September, 1969, he attended the pre-school day camp of the Berks County Association for Retarded Children, where he was an attentive student and progressed. He is toilet-trained and able to feed himself, he speaks in phrases and repeats words.

36. From September through December, 1969, he attended a special class at the Pennwyn School of the Berks County School District.

37. At Christmastime, 1969, Christopher John Kelly's parents received a letter from the school psychologist of the Berks County School District saying that he could not return to school, that school was "not any good for him," and excluding him therefrom as "uneducable and untrainable."

38. To the best of his parents knowledge neither their local Wilson School District nor the Berks County School District Boards of Education nor the Secretary of Education have formally acted on his exclusion.

39. His parents have not been accorded notice or a hearing on their child's exclusion from the public schools.

#### The Non-Education of Mark Moser

40. Mark Moser, born December 21, 1954, has been assigned an intelligence quotient of approximately 70.

41. Mark Moser is presently enrolled at River Crest Center, a private school, at an expense to his parents of \$175.00 a month. He can read and write.

42. In September, 1960, his parents registered Mark Moser at the Russell School, Marple-Newtown School District, but were informed that there was no class available to him.

43. From September, 1967 to November, 1967, Mark Moser attended the Bell Avenue School of the Marple-Newtown School District, in a class with students below his own capabilities.

44. In November, 1967, the School District informed his parents that no other class was available, encouraged the parents to remove him from the school, and excused him from public school attendance as unable to profit therefrom.

#### The Non-Education of Billy Reese

45. William Reese, born October 27, 1957, has been assigned an intelligence quotient of approximately 70.

46. William Reese is presently receiving no education at all. He reads at a second grade level, does three number arithmetic, draws, and is able to spell syllabically.

47. From September, 1964 until October, 1966, William Reese attended special classes at the Cumberland Hills School of the Allegheny County School District.

48. During the 1967-68 school year, he attended Cumberland Hills School two days a week, and was tutored at St. Francis, a private school, one hour a day, three days a week at his parents' expense.

49. In September, 1968, he returned to Cumberland Hills full time but after eight days he was put out of school, excused as "unable to profit from school attendance."

50. For the remainder of the 1968 school year, he was tutored at St. Francis an hour a day, five days a week.

51. In February, 1969, his parents requested home instruction from the Shaler Township School District; the request was denied.

52. In the summer of 1969, William Reese attended the Buttonwood Farms Camp in Bucks County, at an expense of \$900.00 to his parents.

53. In September, 1969, when his parents again sought to enroll him in public school, the Shaler Township District psychologist refused to accept him.

54. During the school year 1969-70, he was privately tutored two hours a week.

55. In the summer of 1970, he again attended the Buttonwood Farms Camp at his parents' expense.



56. In September, 1970, his parents again requested home instruction and, again, home instruction was refused by the Shaler Township School District.

57. William Reese was accepted in August, 1970, at the Elwyn Institute, a private boarding school in Delaware County, where the tuition will be \$5,400 a year plus \$150.00 admission fee, but has since been on the waiting list for admission.

#### The Non-Education of David Tupi

58. David Tupi, born February 24, 1956, has been assigned an intelligence quotient of approximately 30.

59. David Tupi has not been in public school since he was "excused" therefrom in October, 1968. Since then and until May, 1970, he attended St. Anthony's School for Exceptional Children, a private school, for recreation and therapy on an after school basis three to five days a week.

60. In August, 1962, he was examined by a school psychologist and in December was accepted for the Larimer School of the Pittsburgh School District. After three weeks attendance, he was excused from the school because "he couldn't make the adjustment."

61. Two weeks later his parents, at an expense to them of \$20 a month, enrolled David Tupi at St. Anthony's School for Exceptional Children which he attended for three years.

62. In April, 1968, David was tested again by the Pittsburgh School District and accepted for September, 1968. For one month he attended a class of handicapped children, most of them bigger and older than David. In October, 1968, his parents were informed that "he couldn't handle the classroom", and he was sent home as "unable to profit from school attendance."

The Non-Education of Sandra Lydard

63. Sandra Lydard, born August 17, 1954, has been assigned an intelligence quotient of approximately 35-40.

64. Sandra Lydard attended a pre-school special class in the Laurel, Maryland School District most of the 1959-60 school year.

65. During the next three years, while living in Cumberland, Maryland and Frankfurt, Germany, she did not attend school because the school districts had no special classes for her.

66. In Fort Dix, New Jersey during the school year 1964-65, she attended a special class for retarded trainable children which her parents were instrumental in requiring the school district to start.

67. From March, 1965 until June, 1970, Sandra Lydard attended the Special Education Center of the Reading School District, where her parents settled after her father retired from the United States Army.

68. In the course of this education Sandra Lydard learned, inter alia, to talk more fluently, to recognize pictures, letters and numbers.

69. On June 1, 1970, the principal of her school by letter to Sandra Lydard's parents announced that "we are no longer able to provide a program at the Special Education Center that will challenge your child's ability or increase her educational background", and excused her from school as "unable to profit therefrom."

#### The Non-Education of Emery Thomas

70. Emery Thomas was born March 19, 1963.

71. In September, 1968, Emery Thomas was registered for school with the John Barry School of the Philadelphia School District.

72. His mother was thereupon informed that "we don't feel he is ready", "the classroom is overcrowded," and his admission was postponed until he is eight years of age.

#### The Non-Education of William Wenston

73. William Wenston was born January 5, 1963.

74. In the fall of 1969 his parents contacted the Pittsburgh School District, were told that there were "not too many trainable classes" and his admission was postponed until he is eight years of age.

75. From September, 1967 to June, 1970, William Wenston, at an expense to his parents of \$20.00 a month, attended the Shady Side Pre-School Program of the Allegheny County Association

for Retarded Children.

76. Since September, 1970, William Wenston has been on the waiting list for the District's Larimer School.

The Non-Education of Cindy Mae Hatt

77. Cindy Mae Hatt, born February 14, 1962, has been assigned an intelligence quotient of approximately 40.

78. In September, 1968, Cindy Mae Hatt was registered for school with the Governor Mifflin School District, but the school psychologist of the Berks County School District told her parents that her admission to school was postponed.

79. In June, 1969, Cindy Mae Hatt entered Hamburg State School and Hospital for the intensive educational program known as Temporary Placement.

80. In June, 1970, when Cindy Mae Hatt left Hamburg State School and Hospital, she had learned to sleep in a bed, rather than in a crib with netting over it, to feed herself, to control her toilet habits, and her comprehension had significantly improved.

81. In September, 1970, Cindy Mae Hatt entered the special class at the Pennwyn School of the Berks County School District, but in October the school psychologist announced that she "doesn't fit in there" and would not be retained in school because she had not attained a mental age of five years.

82. Since November, 1970, Cindy Mae Hatt has attended the pre-school program of the Berks County Chapter for Retarded Children a private school funded by the Federation of Junior Women's Clubs.

The Non-Education of Ronald Green

83. Ronald Green, born October 4, 1963, has been assigned an intelligence quotient of approximately

84. From September, 1968 through January, 1969, Ronald Green attended kindergarten at the Emlen School of the Philadelphia School District.

85. In September, 1969, he was registered for admission to the public schools, and in March, 1970, was tested by the Philadelphia School District.

86. In that month, the counselor of the Emlen School announced to his mother that Ronald Green would not be admitted until he was eight because he had not yet attained a mental age of five years, and he set a further test for March, 1971.

87. His mother has been unable to enroll him in any other educational program; he is too old for Get Set; the day school of Philadelphia Association for Retarded Children is filled; other private schools are too expensive or too far away. Ronald Green has learned to feed and dress himself; he is toilet trained and fully able to speak.

The Non-Education of Glenn Lowrey

88. Glenn Lowrey, born July 6, 1964, has been assigned an intelligence quotient of approximately 56.

89. In late summer, 1970, he was registered for school with the Mountain View School District.

90. At that time, the school psychologist of the Susquehanna County School District informed Glenn Lowrey's parents that he was "not yet ready for school, perhaps he'll be ready at eight," and he was refused admission to school because he had not yet attained a mental age of five years.

91. Since September, 1970, Glenn Lowrey has attended the Developmental Day Program of the United Cerebral Palsy Association of Lackawanna County, a United Fund supported program in Scranton, Pennsylvania, a round trip of 40 miles a day, where he has been toilet trained and his communication skills have improved significantly.

#### The Right to Education

92. Education is the central function of American state government:

(a) Since 1776, the Constitution of the Commonwealth of Pennsylvania has provided for free public education, and since 1874, for "all the children of this Commonwealth above the age of six years." As presently comprehended in Article 3, Sec. 14: "the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth".

(b) In decisions since the 19th Century the Courts of the Commonwealth of Pennsylvania have declared the Commonwealth's intention universally to provide education for all of its citizens.

(c) The Pennsylvania Public School Code  
24 Purd. Stat. Sec. 13-1301, has provided since 1911 that  
"Every child between the ages of six (6) and twenty-one (21)  
years may attend the public schools in his district."

(d) The Pennsylvania Public School Code,  
24 Purd. Stat. Sec. 13-1326, has provided since 1911 that every  
child must attend school from "the time the child's parents  
elect to have the child enter school, . . . not later than at the  
age of eight (8) years, until the age of seventeen (17) years."

93. Education is required in the performance of the  
most basic public responsibilities; it is the very foundation  
of good citizenship.

94. Education is a principal instrument in awakening  
the child to cultural values, in preparing him for later training,  
and in helping him to adjust normally to his environment.

95. No child may reasonably be expected to succeed in  
life if he is denied the opportunity of an education.

96. The opportunity of education, where the state has  
undertaken to provide it, is a right which must be made available  
to all on equal terms.

97. The Commonwealth of Pennsylvania has explicitly  
declared, in the Public School Code, 24 Purd. Stat. Sec. 13-1372,  
its responsibility to provide for "the proper education and  
training of all exceptional children."

## The Retarded

98. There are as many as 103,800 retarded children of school age in the Commonwealth, only 50,043 of whom are in the public schools.

99. The retarded are commonly described in four groupings: The mildly retarded, with intelligence quotients ranging from 50 - 55 to 70 - 75; the moderately retarded, with intelligence quotients ranging from 35-40 to 50-55; the severely retarded, with intelligence quotients ranging from 20 to 35-40; and the profoundly retarded, with intelligence quotients ranging below 20.

100. Among every 1,000 children of school age, approximately 30 will be retarded children. Of each 30 retarded children, 25 will be mildly retarded (what has traditionally been called "educable"), 4 will be moderately or severely retarded (what has traditionally been called "trainable") and 1 will be profoundly retarded (traditionally called "dependent").

101. Whatever the traditional label, retarded children of any intelligence quotient are capable of benefitting from education.

102. Among every 30 retarded persons, 29, if education is provided to them, are capable of moving toward self-sufficiency, (25 of them, with education, would be able to achieve sufficient skills to enter the labor market and to secure employment in competitive jobs; 4, with education, to secure employment in a sheltered or supervised setting) and one, if education is provided to him, is capable of achieving some degree of self-care.



103. The fact that a child is retarded is not an index of, nor a valid basis for predicting, the educability vel non of that child.

104. Education is even more important to the development of the retarded citizen than it is to the normal citizen, for the latter may develop skills willy-nilly and informally, but the retarded citizen cannot, without sustained educational attention.

105. Education is even more important to the retarded citizen than it is to the normal citizen, for absent education the retarded citizen will be unable to provide for himself and will be in jeopardy of institutionalization and loss of his liberty or, absent education, he may be incapable of self-care and in jeopardy even of life.

106. The earlier a retarded child begins his education, the more thoroughly he will benefit from it and the greater the likelihood of his realizing a capacity for self-sufficiency.

107. Historically and still retarded persons have been regarded with prejudice and subjected to discrimination. They constitute a discreet and insular minority to whom the usual political processes have not been open.

Count I

108. The Pennsylvania Public School Code, 24 Purd. Stat. Sec. 13-1375, provides:

"Uneducable Children Provided for by Department of Public Welfare. The State Board of Education shall establish standards for temporary or permanent exclusion from the public school of children who are found to be uneducable and untrainable in the public schools. Any child who is reported by a person who is certificated as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the board of school directors to the Superintendent of Public Instruction and when approved by him, in accordance with the standards of the State Board of Education shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified the public schools shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training, and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals."

109. Section 13-1375, on its face and as applied, deprives plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that it arbitrarily and capriciously and with no rational basis discriminates between persons who are "educable and untrainable" and persons who are "educable or trainable" excluding the former from the public schools, consigning them to the Department of Public Welfare which has no duty to educate, and depriving them of the right to an education.

110. Section 13-1375, on its face and as applied, deprives plaintiffs of Due Process of Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that it arbitrarily and capriciously and for no adequate reason denies to retarded children of school age the education, and the opportunity to become self-sufficient, contributing members of the Commonwealth, guaranteed by the Constitution and Laws of the Commonwealth of Pennsylvania, and subjects them to jeopardy of liberty and even of life.

111. Section 13-1375, on its face and as applied, deprives plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that, excluding plaintiffs from the public schools, it conditions their education upon the impermissible criteria of wealth, denying education to those children whose parents are poor.

112. Section 13-1375, on its face and as applied, denies plaintiffs the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that plaintiffs' parents are taxed for the support of a system of public education, nevertheless their children are denied the benefits thereof and they must pay additional monies to secure an education for their children.

#### Count II

113. Alternatively, Section 13-1375, on its face and as applied, deprives plaintiffs of procedural Due Process of Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that there is no provision for notice or for a hearing of any kind, let alone an impartial hearing, with right of cross-examination, prior to, or after, the exclusion.

#### Count III

114. The Public School Code, 25 Purd. Stat. Sec. 13-1304, provides:

"Admission of Beginners.

. . . The board of school directors may refuse to accept or retain beginners who have not attained a mental age of five years . . . ."

115. Section 13-1304, on its face and as applied, deprives plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment of the Constitution of the United States, in that it arbitrarily and capriciously and with no rational basis discriminates among children who have reached the chronological age of six, at which age parents may elect under 24 Purd. Stat. Sec. 13-1301 to send their children to school, allowing school districts to refuse admission only to children with a mental age under five years, and depriving them of the right to an education.

116. Section 13-1304, on its face and as applied, deprives plaintiffs of Due Process of Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that it arbitrarily and capriciously and for no adequate reason denies to retarded children of school age the education guaranteed by the Constitution and Laws of the Commonwealth of Pennsylvania and at an age when education can have the most beneficial effect upon a child's capacity for self-sufficiency and self-care.

117. Section 13-1304, on its face and as applied, deprives plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that, having postponed plaintiffs' admission to the public schools, possibly until they are twelve

years of age, it conditions their education upon the impermissible criteria of wealth, denying education to those children whose parents are poor.

118. Section 13-1304, on its face and as applied, denies plaintiffs the Equal Protection of the Law in violation of the Fourteen Amendment to the Constitution of the United States, in that plaintiffs' parents are taxed for the support of a system of public education, nevertheless their children are denied the benefits thereof and they must pay additional monies to secure an education for their children.

#### Count IV

119. The Public School Code, 24 Purd. Stat. Sec. 13-1330 provides:

"Exceptions to Compulsory Attendance.

The provisions of this act requiring regular attendance shall not apply to any child who: . . .

(2) Has been examined by an approved mental clinic or by a person certificated as a public school psychologist or psychological examiner, and has been found to be unable to profit from further public school attendance, and who has been reported to the board of school directors and excused, in accordance with regulations prescribed by the State Board of Education; . . ."

120. Contrary to the clear intent of Section 13-1330, which is to forgive what otherwise would be violations of compulsory attendance requirements and to preserve to the parent the decision whether the child shall attend school, the Regulations of the State Board of Education Secs. 5-400, confuse excusal and exclusion.

121. In practice Section 13-1330 is used by defendants not to forgive non-attendance which a parent might mandate but to mandate non-attendance contrary to the parent's wishes.

122. This Court has pendent jurisdiction of claims based upon state law.

123. Sections 5-400 of the Regulations of the State Board and the practice thereunder are unlawful as contrary to Section 13-1330 of the Public School Code.

Count V

124. The Public School Code, 24 Purd. Stat. Sec. 13-1326 provides:

"Definitions. The term 'compulsory school age' as hereinafter used, shall mean the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years."

125. The Public School Code, 24 Purd. Stat. Sec. 13-1301, provides:

"Every child between the ages of six (6) and twenty-one (21) years may attend the public schools in his district."

126. In practice the defendants have unlawfully confused the above-cited discreet provisions, excluding retarded children from the schools until the age of eight years and excluding retarded children from schools at seventeen years, despite their parents' election to the contrary and the clear statutory guarantee that every child may attend the public schools between the ages of six and twenty-one.

127. This Court has pendent jurisdiction of claims based upon state law.

128. The practice of excluding retarded children from the schools until the age of eight years and at the age of seventeen years is unlawful as contrary to Section 13-1301 of the Public School Code.

Count VI

129. Defendants have consistently, and arbitrarily, to the great detriment of plaintiff retarded children, applied Sections 1375, 1330, 1326 and 1304 of the Public School Code, and tolerated their application by those under their supervision and control, and otherwise have so acted to deny plaintiff retarded children their right to attend public school and to an education, inter alia, by excluding and excusing them from school, by postponing their admission to school, by terminating their attendance at seventeen years, and by failing to provide education for children resident at State Schools and Hospitals for the retarded.

130. The within cited statutory provisions have been arbitrarily and capriciously applied by defendants unconstitutionally denying an education to plaintiff retarded children and depriving them of their right to the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States.

131. The above cited conduct of defendants has unconstitutionally denied an education to plaintiff retarded children depriving them of their right to the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States.

132. The statutes as applied by defendants, and their conduct, deprive plaintiffs of Due Process of Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that they arbitrarily and capriciously and for no adequate reason deny to retarded children of school age the education, and the opportunity to become self-sufficient, contribution members of the Commonwealth, guaranteed by the Constitution and Laws of the Commonwealth of Pennsylvania, and subject them to jeopardy of liberty and even of life.

133. The statutes as applied by defendants, and their conduct, deprive plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States in that, having excluded plaintiffs from public schools, they condition plaintiffs education upon the impermissible criteria of wealth, denying education to those children whose parents are poor.

134. The statutes as applied by defendants, and their conduct, deprive plaintiffs of the Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States, in that plaintiffs' parents are taxed for the support of a system of public education, nevertheless their children are denied the benefits thereof and they must pay additional monies to secure an education for their children.



WHEREFORE, it is respectfully prayed that this Court:

(1) Convene a three-judge District Court as required by Title 28 U.S.C. Secs. 2281 and 2284.

(2) Declare Sections 1375 and 1304 of the Public School Code of 1949 and any enforcement thereof unconstitutional.

(3) Declare Sections 1375, 1330, 1326, and 1304 of the Public School Code of 1949 unconstitutional as applied and defendants' policies, practices and procedures thereunder as complained of herein, unconstitutional.

(4) Preliminarily and permanently enjoin all defendants, their employees, agents, successors and all others acting in concert with them and subject to their supervision and control from:

(a) enforcing Sec. 1375 and 1304 of the Public School Code of 1949;

(b) denying admission to the public schools and an education to any retarded child of school age;

(c) otherwise giving differential treatment concerning attendance at school to any retarded child.

5. Preliminarily and permanently enjoin the Secretary of Education directly to provide, maintain, administer, supervise, and operate classes and schools for the education of retarded children in each school district where hearing shows an inadequate number of such classes or schools are provided by the district and further, enjoin the Secretary of Education to charge the cost thereof to any money due to such district out of any state appropriation.

6. Preliminarily and permanently enjoin the Secretary of Education directly to provide, maintain, administer, supervise and operate classes and schools for the education of retarded children in each State School and Hospital for the retarded, and further enjoin the Secretary of Education to charge the cost thereof to any monies due out of any state appropriation to the school districts of each child's origin.

7. Preliminarily and permanently enjoin defendants to provide compensatory years of education to each retarded person who has been excluded, excused or otherwise denied the right to attend school while of school age and further enjoin defendants to give notice of the judgment herein to the parents or guardian of each such person.

8. Grant plaintiffs the cost of prosecuting this action.

9. Grant such other relief as shall be necessary and proper.

*s/ Thomas K. Gilhool*

Thomas K. Gilhool

Room 1300  
One North 13th Street  
Philadelphia, Pennsylvania 19107  
215-LO 3-8604

January 7, 1971

Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA

:SS.

COUNTY OF PHILADELPHIA

JAMES R. WILSON JR. being duly sworn according to law, deposes and says that he is President of the Pennsylvania Association for Retarded Children, one of the plaintiffs in the foregoing action, that he is authorized by the Association and by each of the plaintiffs to take this affidavit and that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

*s/ James R. Wilson, Jr.*  
\_\_\_\_\_  
JAMES R. WILSON, JR.

Sworn to and subscribed  
before me this        day  
of                    1971.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_