



Jl-IL-002-001

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

H. STUART CUNNINGHAM
UNITED STATES DISTRICT CO

DONNELL C., EDWARD C., ROBERT Ma.,
MARVIN S., TALMAS E., ROBERT Mu,
WILLIAM D., CLIFFORD C., ERIC B.,
CHRISTOPHER P., TOMMY H., SALEEM L.,
ANDRE B., SHAUN M., RACHEL T.,
KATRINA B., MARYANN M., FRANKLIN J.,
MICHAEL B., STEVEN F., EUGENE B.,
LASHAWN H., RICKY B., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF
EDUCATION; ROBERT LEININGER,
Superintendent of the Illinois
State Board of Education; THE
BOARD OF EDUCATION OF THE CITY OF
CHICAGO; TED D. KIMBROUGH,
Superintendent of the Chicago
Public Schools; and CONI BATLLE,
JACKIE B. BRECKENRIDGE, MARCENE
M. BROADWATER, HUGH R. BROWN,
RICK L. CATT, DOREEN CREWE, MARY
ANN S. MACLEAN, DEBORAH MILLER,
LYLE NEUMANN, DOROTHY O'NEILL,
JESSE M. RIOS, HERB R. ROACH,
MICHAEL W. SKARR, AND G. HOWARD
"BUD" THOMPSON, members of the
Illinois State Board of Education,

Defendants.

No. 930 3331

JOSE MORDBERG

MAGISTRATE JUDGE BOBRICK

COMPLAINT

INTRODUCTION

1. The 23 named plaintiffs bring this action to assure that they, as well as all other present and future school-age pretrial detainees at the Cook County Jail ("CCJ"), will no longer be denied the educational services guaranteed them by law and required for their development as economically self-sufficient, socially

responsible adults. By denying all educational services to most such pretrial detainees and by providing the rest with educational services that are vastly inferior to what defendants provide non-pretrial detainees, defendants are violating plaintiffs' rights under the Individuals with Disabilities Education Act (hereafter "IDEA"), 20 U.S.C. §§ 1400 et seq., and under Section 504 of the Rehabilitation Act of 1973, (hereafter "§ 504") 29 U.S.C. § 794, the Fourteenth Amendment to the United States Constitution and Illinois law.

2. Special education and related services, as used in this complaint, are those services that, according to the IDEA and implementing regulations, meet the educational needs of children who suffer from educational disabilities, who include children identified as mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities. Regular education services, as used in this complaint, are those services that school boards are required to provide all eligible students in order to secure for them their statutory right to an equal education.

3. Defendants have denied plaintiffs' rights to appropriate educational services in five distinct ways:

a. defendants deny completely the special education and related services needed by those educationally disabled plaintiffs whose need for such services defendants have failed to identify;

b. defendants deny completely the special education and related services needed by plaintiffs who have been identified as needing such services because defendants' failure to provide sufficient teachers, programs and related services to meet the need for such services among the population of youthful detainees has caused many plaintiffs to be completely excluded from special education services;

c. defendants deny appropriate special education and related services to the educationally disabled plaintiffs who are enrolled in the CCJ School because defendants have failed to provide sufficient teachers, programs, related services, and procedural protections to meet federal standards for the provision of appropriate, individualized special education services to disabled students;

d. defendants completely deny regular education services to the great majority of plaintiffs who are eligible for such services; and

e. defendants deny to plaintiffs who are eligible for and receive regular education services such services that are equal to the services made available to eligible children who are not pretrial detainees.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 20 U.S.C. § 1415(e)(2) and (e)(4), 28 U.S.C. § 794 (a)(2), and 28 U.S.C. §§ 1343(3) and 1367. The federal claims also arise under 42 U.S.C. § 1983.

PARTIES

5. The individual plaintiffs who bring this action on their own behalf and as class representatives are as follows:

i. Donnell S., born October 17, 1974, is a pretrial detainee who began his detention at the CCJ on October 28, 1992. The last grade Donnell completed was tenth grade in the Chicago Public Schools. Donnell signed up for attendance at the CCJ School shortly after his detention, but has never been allowed to enroll in the School. Donnell has been diagnosed as having a learning disorder and has been in special education programs since seventh grade. During his last year in school, Donnell took courses in English, Science, Social Studies and Computers. Donnell wants and needs special education instruction especially to help him with his learning problems regarding math and spelling. Donnell is now enrolled in a GED program at the CCJ, which for one and one-half hours each day teaches English and Math. This program does not address Donnell's learning disability nor his wish for education in subjects in addition to English and Math.

ii. Edward C., born May 27, 1972, is a pretrial detainee who began his detention on September 27, 1972. The last grade Edward completed was eleventh grade in the Chicago Public Schools. Edward has been identified by the Public Schools as in need of special education because of learning and behavioral disorders. Edward has not been offered any educational opportunities at the CCJ and is not aware of any such opportunities in his present assignment to Division II in the CCJ. Edward's IEP has not been reviewed nor

implemented by defendants at the CCJ. Edward would like to attend a school program at the CCJ that offers courses generally available in the Chicago Public Schools and that would provide him with instruction specifically directed toward his educational disabilities.

iii. Robert Ma., born January 1, 1975, is a pretrial detainee at the CCJ, who began his detention on June 1, 1991. The last grade Robert completed was tenth grade in the Chicago Public Schools. Shortly after his detention at the CCJ, Robert was placed in the School Wing of Division VI, which placement enabled him to attend the CCJ's regular school program, which offered classes in English and Math. In September, 1991, Robert was moved to a different floor on his wing of the CCJ after which he was told he could no longer attend the CCJ School. Robert asked a teacher about attendance at the CCJ's GED program, but was told he was too young and should be in the regular CCJ School program instead. However, when he requested return to the CCJ School program, his request was denied. Robert would like to attend school with a regular high school curriculum that would allow him to obtain a regular high school diploma.

iv. Marvin S., born November 3, 1973, is a pretrial detainee who began his detention at the CCJ on October 25, 1972. The last grade Marvin completed was tenth grade in the Chicago Public Schools. Although Marvin was told about the CCJ School by a CCJ social worker, he has not been placed in a CCJ wing that would enable him to attend the CCJ School. Although Marvin has a learning

and behavior disorder and has been in Chicago Public School special education classes, his IEP has neither been reviewed nor implemented while at the CCJ. Marvin wants to continue in school and wishes especially to enroll in courses in algebra, history and science.

v. Talmas E., born January 22, 1975, is a pretrial detainee who began his detention at the CCJ on July 9, 1992. The last grade Talmas completed was ninth grade in the Chicago Public Schools. Talmas has been identified by the Public Schools as in need of special education because of learning and behavioral disorders. Talmas has not been offered any educational opportunities at the CCJ and is not aware of any opportunities there. Talmas's IEP has not been reviewed nor implemented by defendants at the CCJ. Talmas would like to attend a school program at the CCJ that offers courses generally available in the Chicago Public Schools, including Science, Math and Reading, and that would provide him with instruction specifically directed toward his educational disabilities.

vi. Robert Mu., born on April 26, 1974, is a pretrial detainee at the CCJ, who began his detention there on August 6, 1992. Prior to detention, he had been identified as learning disabled and had attended learning disabled classes at St. Joseph Academy in Niles pursuant to his own Individualized Educational Plan ("IEP"). Although Robert is eligible for and in need of special education services, and has requested education services at the CCJ, his IEP has not been implemented and he has not been placed in any educational program since his detention at the CCJ.

vii. William D., born June 1, 1974, is a pretrial detainee at the CCJ, who began his detention there on September 29, 1992. Prior to detention he was identified as having a severe learning disability by the Chicago Public Schools, which had created and implemented his own IEP. Although William is eligible for and in need of special educational services, his IEP has not been implemented and he has not been placed in a special education program since his detention at the CCJ. When William was first incarcerated at the CCJ he was placed in Division IX where he was allowed to attend regular education classes. However, several days later, William was transferred to Division VIII, where he requested enrollment in an educational program, but was told by CCJ officials that he would have to wait 2 to 3 months before he could be enrolled in such a program.

viii. Clifford C., born on August 28, 1975, is a pretrial detainee at the CCJ, who began his detention there on August 28, 1992. Prior to detention, he was identified as behavior disordered by the Chicago Public Schools, which had created and implemented his own IEP. Although Clifford is eligible for and in need of special educational services, his IEP has not been implemented and he has not been placed in any educational program since his detention at the CCJ. Clifford has requested enrollment in an educational program at the CCJ, but was told by a teacher that there was no room for more students.

ix. Eric B., born September 3, 1975, is a pretrial detainee at the CCJ, who began his detention on August 28, 1992. The last

grade Eric completed was eighth grade in the Chicago Public Schools. After having been told there were long waiting lists for admission to education programs at the CCJ, Eric asked to be placed on the waiting list.

x. Christopher P., born April 18, 1975. is a pretrial detainee at the CCJ, who began his detention on October 2, 1992. The last grade Christopher completed was eleventh grade at Evanston High School in Evanston, Illinois. Just before his arrest Clifford was to be evaluated for special education services because of a suspected educational disability. When Clifford requested enrollment in the CCJ School program, he was told there was a long waiting list and was denied enrollment.

xi. Tommy H., born October 19, 1972, is a pretrial detainee at the CCJ, who began his detention on March 30, 1992. The last grade Tommy completed was tenth grade in the Chicago Public Schools. Tommy requested admission to the CCJ School program, but received no response to his request. Tommy is being given some instruction in classes at the CCJ which are supposed to teach enough math and reading to qualify detainees to take the examination for the General Equivalency Degree ("GED"). Although such instruction is supposed to last for two hours, four days a week, Tommy and his CCJ classmates are allowed in the classroom for only about 30 minutes per day on each of the four days. During that time, he and his classmates are rarely taught math and never taught reading. In addition to wanting regular high school instruction,

Tommy wants the opportunity for vocational education that will qualify him for skilled labor after he is released.

xii. Saleem L., born on October 7, 1973, is a pretrial detainee at the CCJ, who began his detention there on March 7, 1992. The last grade Saleem completed was ninth grade in the Chicago Public Schools. Prior to detention Saleem was classified as learning disabled by the Chicago Public Schools and, therefore, in need of special education services. Shortly after his detention at the CCJ, Saleem was placed in the School Wing of Division VI, which placement enabled him to attend the CCJ's regular school program. In that program Saleem received instruction each day for two hours in reading and math. Before placement in the CCJ School program, Saleem was tested for approximately 45 minutes. In April, 1992, Saleem was taken off the school wing and, thereby denied the opportunity to attend the CCJ School. Further, Saleem has never had his IEP implemented nor has he been placed in a special education program since his detention at the CCJ. In April, 1992, Saleem requested in writing that he be allowed to attend the CCJ School again, but has received no response. Saleem would like regular education classes, including classes in reading as well as instruction to help him cope with his learning disability.

xiii. Andre B., born June 7, 1973, is a pretrial detainee who began his detention on August 2, 1992. The last grade Andre completed was eleventh grade at Lyons Township High School. Andre would like to complete his high school education and gain a high school diploma, but because of the lack of sufficient regular

education programs at the CCJ is being denied the opportunity to obtain the requisite education.

xiv. Shaun M., born December 2, 1972, is a pretrial detainee who began his detention at the CCJ on January 27, 1992. Shaun was in the twelfth grade Proviso East High School in Maywood Illinois at the time of his detention. Shaun requested in writing to be placed in the CCJ School program, but was denied admission on the ground that it was for younger detainees. Shaun is enrolled in the CCJ's GED program which offers instruction in reading and math for approximately 45 minutes a day, four days a week. Shaun would like to attend school with a regular high school curriculum that would allow him to obtain a regular high school diploma.

xv. Rachel T., born March 19, 1973, is a pretrial detainee who began her detention at the CCJ on October 1, 1992. Rachel was in the second semester of twelfth grade in the Chicago Public Schools at the time of her detention. She has been attending classes in the Jail School where her instruction has consisted almost entirely of work on vocabulary and sentence formation. She has had no instruction in math or reading or in any of the courses she was taking before her detention, which included Trigonometry, English IV, Social Studies, Biology and Food Services. There are no texts or workbooks used in her school program and the teaching is directed almost entirely to the remedial vocabulary and grammar problems of younger students. Rachel would like to attend a school program similar to her program before her detention so that she can graduate from high school and obtain a degree in nursing.

xvi. Katrina B., born January 25, 1973, is a pretrial detainee who began her detention at the CCJ on September 9, 1992. The last grade Katrina completed was tenth grade in the Chicago Public Schools. Although a CCJ teacher advised her in September that she would be going to the CCJ School, she has never been permitted to attend. Katrina was taking business and accounting courses when she was attending Westinghouse Vocational High School in Chicago and would like to continue with such courses in the CCJ so that she will have a better opportunity for employment after her release.

xvii. Maryann M., born April 26, 1972, is a pretrial detainee who began her detention at the CCJ on November 2, 1992. The last grade Maryann completed was seventh grade in Hillsborough County, Florida. Maryann has been diagnosed as having a severe learning disorder and has been in self-contained special education classes since second grade. Maryann asked to be enrolled in the CCJ School when she was first detained there but was told by a correctional officer that she could not enroll because there were too many people in the School already. Maryann reads at a third grade level and would like instruction to enable her to read better and learn at a faster rate.

xviii. Franklin J., born April 7, 1975, is a pretrial detainee who began his detention at the CCJ August 20, 1992. At the time of his detention Franklin was in the tenth grade in the Chicago Public Schools where he was taking courses in Geometry, English, Art, Social Studies and Physical Education. Franklin was never informed of the possibility of enrolling at the CCJ in a regular school

program. He was told that he could attend classes for a GED. Franklin wishes, however, to enroll in a regular high school program so that he can obtain his high school diploma and attend college.

xix. Michael B., born December 18, 1974. is a pretrial detainee who began his detention at the CCJ on September 26, 1972. The last grade Michael completed was eleventh grade in the Chicago Public Schools. Michael has not been informed of any opportunity to attend school at the CCJ and until he learned about the possibility of the instant lawsuit in late November, 1992, he did not know there was any school program at the CCJ. Michael would like to earn his high school diploma in order to help him gain employment after his release from the CCJ.

xx. Steven F., born July 18, 1972, is a pretrial detainee who began his detention at the CCJ on October 9, 1992. The last grade Steven completed was tenth grade in the Chicago Public Schools. His courses in his last school year were Science, History, Algebra and Woodshop. Robert is in the GED program at the CCJ in which he receives instruction in English and Math for 75 minutes four days a week. Robert has learned little in this program because of its limited duration and its abbreviated instruction. Robert wishes to enroll in a regular high school degree program that would offer a normal range of high school courses, including, in particular Math, History, Accounting and vocational education that would help him toward his goal of becoming an electrician. Robert has not been

informed of or offered the opportunity to attend the CCJ School program.

xxi. Eugene B., born September 29, 1973, is a pretrial detainee who began his detention at the CCJ on April 2, 1991. The last grade Eugene completed was ninth grade in the Chicago Public Schools. For three months Eugene was in a GED Program where he was taught Math and English three days a week for two hours. However, when he was transferred to a different wing of the CCJ, he was removed from the GED program and has subsequently been given no opportunity for participation in any instructional program. Eugene has been identified as educationally disabled by the Chicago Public Schools and experiences substantial learning difficulties in reading and spelling. When he last attended school Robert took courses in Math, Science, English, Social Studies, Drafting, Health and Physical Education. Robert would like to attend a school program at the CCJ that offers courses generally available in the Chicago Public Schools and that would provide him with instruction specifically directed toward his educational disabilities.

xxii. Lashawn H., born April 17, 1973, is a pretrial detainee who began his detention at the CCJ on August 7, 1992. The last grade Lashawn completed was eleventh grade in the Chicago Public Schools. When attending high school Lashawn took courses in Math, Science, Social Studies, English, Art and Physical Education. Lashawn has requested enrollment in the CCJ School program, but was told by a teacher that there were no spaces then available. Lashawn would like to attend a five day a week full-time school program at

the CCJ that offers courses generally available in the Chicago Public Schools, including in particular Math, Social Studies, Science and Reading.

xxiii. Ricky B, born November 17, 1974, is a pretrial detainee who began his detention at the CCJ on May 3, 1992. The last grade Ricky completed was tenth grade in the Chicago Public Schools. During his last year in school, Ricky took courses in Geometry, English, Reading, Math, Geography, Graphics and Horticulture. Ricky would like to attend a school program at the CCJ that offers courses generally available in the Chicago Public Schools and that would provide him with instruction helpful to his future employment. Ricky has not been offered the opportunity to enroll in the CCJ School program, but did take GED classes of one hour for two days a week in July, 1992.

6. Defendant Illinois State Board of Education (hereinafter "Illinois Board") is a state educational agency as defined in 20 U.S.C. § 1401(7). As a recipient of federal funds that have been granted pursuant to the Illinois Board's agreement to abide by the terms of its State plan that has been approved by the United States Secretary of Education, the Illinois Board, pursuant to 20 U.S.C. § 1412(6), is responsible for assuring that all children with disabilities within Illinois are identified, located, evaluated and provided with a free appropriate public education. The Illinois Board also has the following duties regarding the education of students with and without disabilities: pursuant to Ill. Rev. Stat. Ch.122 § 2-3.3, "(t)o supervise all the public schools in the

State;" pursuant to Ill. Rev. Stat. Ch. 122 § 2-3.6, "(t)o make rules necessary to carry into efficient and uniform effect all laws for establishing and maintaining free schools in the State," and; pursuant to Ill. Rev. Stat. Ch. 122 § 2-3.25, "(t)o determine for all types of schools conducted under this Act (conferring powers and duties on the State Board) efficient and adequate standards for the . . .instruction and teaching, curriculum, library operation, maintenance, administration and supervision, and to issue, refuse to issue or revoke certificates of recognition for schools or school districts pursuant to standards established (under the Act). . . ."

7. Defendants CONI BATLLE, JACKIE B. BRECKENRIDGE, MARCENE M. BROADWATER, HUGH R. BROWN, RICK L. CATT, DOREEN CREWE, MARY ANN S. MACLEAN, DEBORAH MILLER, LYLE NEUMANN, DOROTHY O'NEILL, JESSE M. RIOS, HERB R. ROACH, MICHAEL W. SKARR, AND G. HOWARD "BUD" THOMPSON are the members of the Illinois State Board of Education and have the duties specified in ¶ 6 above.

8. Defendant ROBERT LEININGER is the Superintendent of the Illinois Board. He is responsible for the overall administration of the Illinois Board pursuant to Ill. Rev. Stat. ch. 122, para. 1A-4(B) (1989).

9. Defendant BOARD OF EDUCATION OF THE CITY OF CHICAGO (hereinafter "Chicago Board") is a "local educational agency" as defined in 20 U.S.C. § 1401(8), and therefore, according to 34 C.F.R. § 300.2 is bound by the requirements of the IDEA. The Chicago Board is responsible for the administration of Chicago

Public School District # 299, which includes the CCJ School. Pursuant to 20 U.S.C. § 1414 and Ill. Rev. Stat. ch. 122, para. 34-18 (1989), the Chicago Board is responsible for the administration of special education services for all persons with School District # 299, which includes CCJ detainees, from age 3 until age 21 or successful completion of their secondary program. Pursuant to Ill. Rev. Stat. Ch. 122 § 10-20.12 (1991) the Chicago Board is required to secure for all persons within School District # 299, which includes CCJ detainees, from age 6 to 21 the right and opportunity to an equal education by establishing and operating a sufficient number of free schools for the education of all such persons.

10. Defendant TED D. KIMBROUGH is Superintendent of the Chicago Public Schools. He is responsible for the overall administration of the Chicago Public Schools pursuant to Ill. Rev. Stat. ch. 122, para. 34-6 (1989).

CLASS ALLEGATIONS

11. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named plaintiffs bring this class action on their own behalf and on behalf of all other persons who are or will be similarly situated. The plaintiff class consists of all CCJ pretrial detainees who are, or will be after December 17, 1992, entitled under state and federal law to free regular or special education services. Included in this class are pretrial detainees who, while in or under their twenty-first year, a) have been identified as requiring special education and related services, but are being denied the requisite

services at the CCJ, b) need special education and related services, but are being denied all such services because they have not been identified by defendants as needing such services, and c) are being denied the regular education services to which they would be entitled under state law were they not incarcerated as pretrial detainees.

12. The defined class is so numerous that joinder of all plaintiffs is impracticable. Upon information and belief, in August of 1992 approximately 2,274 detainees under age 21 resided at the CCJ. Upon information and belief, a minimum of forty percent of such youthful detainees at the CCJ are disabled and in need of special education and related services. Consequently, the number of youthful detainees in need of special education is a minimum of 900, and the number of individuals in need of regular education may be as high as 1,374.

13. There are questions of fact and law common to the class, and those questions predominate over all other questions affecting individual class members. All of the youthful plaintiffs have either the same federal statutory right to special education services or the same federal constitutionally protected right not to be arbitrarily denied their state statutory right to regular education services.

14. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs' claims arise from the same conduct -- the denial of any or adequate regular and special

education services to eligible detainees -- that gives rise to the absentee members' claims.

15. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the class; the plaintiffs and class members both seek to make available to all detainees free, appropriate and equal special and regular education services. Thus, the relief that the named plaintiffs seek will benefit all members of the class.

16. By routinely denying regular and special education to members of the class, the defendants' have acted on grounds generally applicable to the class. As a result, declaratory and injunctive relief with respect to the entire class is appropriate. The plaintiffs' rights to education can best be addressed in one action on their behalf.

17. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Because of the continually changing composition of the CCJ pretrial detainee population, a remedy for defendants' ongoing violation of detainees rights to special and regular education can be obtained only through class relief.

**ENTITLEMENTS UNDER THE IDEA, § 504, THE UNITED STATES
CONSTITUTION AND ILLINOIS LAW**

18. Pursuant to the IDEA and § 504, all defendants have a duty to assure appropriate educational services to all school-age pretrial detainees with educational disabilities at the CCJ.

19. The Illinois Board receives federal funds under the IDEA. As a condition of receiving federal funds, the Illinois Board,

Illinois Board members and Robert Leininger are statutorily required under the IDEA:

a. to assure for all children with disabilities as defined by 34 C.F.R. § 300.5, who include members of the plaintiff class, until they are 21 years of age or the successful completion of their secondary program (23 Ill. Admin. Code § 226.120) the right to a free appropriate public education as defined by 34 C.F.R. § 300.4 (20 U.S.C. §§ 1412(1) and (2)(B), 1414(a)(2) and (6), 34 C.F.R. §§ 300.1(a), 300.121(a), 300.300(a));

b. to provide special education and related services to children residing in the geographic area served by the Chicago Board when it determines that the Chicago Board is unable or unwilling to establish and maintain programs of free appropriate public education for those children (20 U.S.C. § 1414(d)).

c. to have policies and procedures to assure that all children with disabilities who are in need of special education, including members of the plaintiff class, regardless of the severity of their disabilities, are identified, located and evaluated (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. §§ 300.128(a)(1)), 300.220);

d. to have policies and procedures to assure that a practical method is developed and implemented to determine which eligible children, including plaintiff class members, are currently receiving needed special education and related services and which eligible children are not currently receiving needed special

education and related services (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. § 300.128(a)(2));

e. to develop monitoring policies and procedures to insure that the Illinois Board both (i) knows the number of disabled children, including plaintiff class members, within each disability category that have been identified, located and evaluated and (ii) obtains information adequate to evaluate the effectiveness of its policies and procedures in meeting its obligations under subparagraphs c and d of this paragraph (34 C.F.R. § 300.128(b)(5));

f. to assure that the Chicago Board develops and implements an individualized education program (hereinafter "IEP") for each child with a disability, including plaintiff class members (34 C.F.R. § 300.341(a));

g. to assure that the Chicago Board maintains records of the IEP for each child with a disability, including plaintiff class members, and that the IEP for each such child shall be established, reviewed and, if necessary, revised (20 U.S.C. § 1412(4), 34 C.F.R. § 300.130(a));

h. to provide for procedures for evaluation of the effectiveness of programs, including IEPs, in meeting the educational needs of children with disabilities, including plaintiff class members (20 U.S.C. § 1413(a)(11));

i. to assure that disabled students in the CCJ School are provided special education services that are comparable in kind and quality to the services the Chicago Board provides for disabled

and non-disabled students in regular and special education programs outside of the CCJ School (20 U.S.C. § 1414(a)(2)(c), 34 C.F.R. § 300.231(b), 34 C.F.R. §§ 104.33(b) and 104.34(c))

j. to assure that there is an adequate supply of qualified special education and related services personnel (20 U.S.C. §§ 1413(a)(3)(A), 1414(a)(1)(C)(i));

k. to assure that the special education and related services personnel are appropriately and adequately prepared and trained (20 U.S.C. §§ 1413(a)(3)(B) and (a)(14), 1414(a)(1)(C)(i), 34 C.F.R. § 300.153(b)(1));

l. to assure that it and the Chicago Board maintain genuine procedural safeguards for children with disabilities, including plaintiff class members, and their parents or guardians (20 U.S.C. §§ 1412(5)(A), 1414(a)(7), 1415, 34 C.F.R. §§ 300.131, 300.501, 300.506);

m. to assure that the Chicago Board provides written notice to the parents or guardians of children with disabilities, including plaintiff class members, informing them of the available procedural safeguards whenever the Chicago Board proposes or refuses to initiate or change the identification, evaluation, educational placement or free appropriate public education of the child (20 U.S.C. § 1415(b)(1)(C), (D), 34 C.F.R. §§ 300.504, 300.505));

n. to evaluate at least annually the effectiveness of the Chicago Board's programs, including IEPs, in meeting the educational needs of children with disabilities, including

plaintiff class members (20 U.S.C. § 1413(a)(11), 34 C.F.R. § 300.146);

c. to assure the Chicago Board's compliance with all requirements of the IDEA. (20 U.S.C. § 1412(6), 34 C.F.R. § 300.600).

20. The Chicago Board receives federal funds under the IDEA. As a condition of receiving federal funds, the Chicago Board and Ted D. Kimbrough are required under the IDEA:

a. to provide for all children with disabilities as defined by 34 C.F.R. § 300.5, who include members of the plaintiff class, until age 21 or successful completion of their secondary program (23 Ill. Admin. Code § 226.120) a free appropriate public education as defined by 34 C.F.R. § 300.4 (20 U.S.C. §§ 1412(1) and (2)(B), 1414(a)(2) and (6), 34 C.F.R. §§ 300.1(a), 300.121(a), 300.300(a));

b. to identify, locate and evaluate all children with disabilities, including plaintiff class members, who are in need of special education regardless of the severity of their disabilities (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. §§ 300.128(a)(1), 300.220);

c. to develop and implement a practical method for determining which eligible children, including plaintiff class members, are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. § 300.220);

d. to conduct a meeting, for the purposes of developing an IEP for each child with a disability, including plaintiff class members, within 30 days of a determination that each such child needs special education and related services (34 C.F.R. § 300.343(c));

e. to provide an IEP for each child with a disability, including plaintiff class members (20 U.S.C. § 1414(a)(5), 34 C.F.R. § 300.342);

f. to consult with individuals involved in or concerned with the education of school-age pretrial detainees with disabilities at the CCJ including parents of such detainees (20 U.S.C. §§ 1412(7), 1414(a)(1)(C)(iii), 34 C.F.R. §§ 300.226, 300.345);

g. to maintain records of the IEPs for each child with a disability, including plaintiff class members, so that the IEPs can be reviewed and, if necessary, revised (20 U.S.C. § 1412(4), 34 C.F.R. § 300.130(a));

h. to review each IEP of children with disabilities, including plaintiff class members, and, if appropriate, to revise the IEP to better meet the needs of each such child (20 U.S.C. § 1414(a)(5), 34 C.F.R. §§ 300.130(a), 300.343(d));

i. to provide disabled students in the CCJ School special education services that are comparable in kind and quality to the services it provides for disabled and non-disabled students in regular and special education programs outside of the CCJ School

(20 U.S.C. § 1414(a)(2)(c), 34 C.F.R. § 300.231(b), 34 C.F.R. §§ 104.33(b) and 104.34(c));

j. to assure that there is an adequate supply of qualified special education and related services personnel (20 U.S.C. §§ 1413(a)(3)(A), 1414(a)(1)(C)(i));

k. to assure that the special education and related services personnel are appropriately and adequately prepared and trained (20 U.S.C. §§ 1413(a)(3)(B) and (a)(14), 1414(a)(1)(C)(i));

l. to maintain genuine procedural safeguards for children with disabilities, including plaintiff class members, and their parents or guardians (20 U.S.C. §§ 1412(5)(A), 1414(a)(6) and (7), 1415, 34 C.F.R. §§ 300.237, 300.501, 300.506).

m. to provide written notice to the parents of a child with a disability, including plaintiff class members, informing them of the available procedural safeguards whenever the Chicago Board proposes or refuses to initiate or change the identification, evaluation, educational placement or free appropriate public education of the child (20 U.S.C. § 1415(b)(1)(C), (D), 34 C.F.R. §§ 300.504, 300.505);

n. to assure and guarantee compliance with all requirements of the IDEA and its implementing regulations (34 C.F.R. § 300.231(a));

21. Section 504 provides, in pertinent part, that "[n]o otherwise qualified individual with handicaps in the United States...shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or

be subjected to discrimination through any program or activity receiving federal financial assistance."

22. Plaintiffs are guaranteed regular education opportunities by Ill. Rev. Stat. ch. 122, § 10-20.12 which requires the Chicago Board of Education to "establish and keep in operation in each year during a school term. . . a sufficient number of free schools for the accommodation of all persons in the district over the age of five and under 21 years, and to secure for all such persons the right and opportunity to an equal education in such schools. . . ."

23. Plaintiffs are guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution the right not to be deprived of special and regular educational services for arbitrary reasons or for reasons not rationally or substantially related to a valid state interest. Plaintiffs are guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution the right not to be deprived of special and regular educational services without prior notice and the opportunity for a fair hearing. Plaintiffs are also guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution the right not to be deprived entirely of special and regular education services where such services are necessary for their attainment of the basic, minimal skills necessary for the enjoyment of the right of speech, for full participation in the political process and for minimal economic self-sufficiency.

COUNT I: DEPRIVATION OF SPECIAL EDUCATION

Factual Statement

24. Most of the detainees at the CCJ have been detained by the criminal courts because they are awaiting trial and cannot afford to post the bond required for their release pending trial. A small proportion of the detainees at the CCJ are serving misdemeanor sentences. All of the CCJ detainees are over sixteen years of age. The average length of stay at the CCJ for detainees of school age is 180 calendar days, although a substantial number of school age detainees are incarcerated at the CCJ while awaiting trial for between one and two years.

25. In July, 1992, approximately 2,274 detainees under age 21 were incarcerated in the CCJ. A minimum of 39%, or 887, of such school-age detainees at the CCJ are eligible for and in need of special education and related services. As of July, 1992, 598, or 39%, of the 1,535 detainees whose prior Chicago Public School records were available to CCJ officials had been identified in such records as having been eligible for special education services.

26. In July, 1992, only 325 to 350 CCJ detainees under age 21 were receiving any special education services. Thus, over 500 detainees who are eligible for and in need of special education services are being completely excluded from any special education services by defendants.

27. The 325 to 350 CCJ detainees under age 21 who are receiving some special education services are not being provided with all of the appropriate special education and related services

for which they are both eligible and have need. Specifically, defendants have failed, inter alia:

1) to hold multidisciplinary staffings for all, rather than a very few, disabled students with the result that teachers have been unable to individualize their instruction to account for the unstaffed students' particular disabilities;

2) to teach classes in which the teacher-student ratio varies with the nature of the students' disabilities as required by a State regulation (23 Ill. Admin. Code § 226.225) that has been approved as part of the State plan by the United States Secretary of Education, with the result that most CCJ School teachers are teaching students in classes of between 15 to 18 students, regardless of the nature and severity of the students' disabilities and consequent differential need for smaller classes;

3) to teach subjects to disabled students in addition to Reading and Math, including Vocational Education, Art, Social Studies, History and Science;

4) to make textbooks, workbooks and writing paper and pencils available to students; and

5) to provide students with needed related services such as speech-language assessment and instruction, other learning disabilities assessment and instruction and social work services.

28. Defendants Chicago Board and Ted D. Kimbrough have failed to provide any IEPs for some of the detainees who are receiving special education services, for others they have provided inadequate IEPs and for most, if not all, special education students at

the CCJ School they have failed to provide the services specified in the IEPs.

29. Defendants Chicago Board and Ted D. Kimbrough have failed to maintain records of the IEPs and their implementation for each detainee receiving special education services so that the IEPs can be reviewed and, when necessary, revised. Although CCJ School staff have made frequent efforts to obtain for CCJ School students their previous Chicago Public School records, such records are not routinely available and are often unobtainable or obtainable only after substantial delays.

30. Defendants Illinois Board, Board members and Leininger have failed to assure that the Chicago Board maintained records of the IEPs and their implementation for each detainee receiving special education services.

31. Defendants Illinois Board, Board members and Leininger have failed to require, and defendants Chicago Board and Kimbrough have failed to provide, a sufficient number of qualified special education and related services personnel at the CCJ School to guarantee that all pretrial detainees eligible for special education receive a free appropriate public education.

32. Defendants Chicago Board and Ted D. Kimbrough have failed to provide special education services which are comparable to the regular and special education services defendants provide to otherwise similarly situated students who are not CCJ pretrial detainees. Unlike CCJ pretrial detainees who are eligible for regular or special education, similarly situated non-detainee

students in the Chicago Public Schools are i) taught courses in addition to reading and math, including vocational education, art, social studies and science and ii) provided with textbooks and workbooks and other instructional materials. Also unlike CCJ pretrial detainees who are eligible for special education and related services, similarly situated non-detainee students in special education programs in the Chicago Public Schools are: i) provided multidisciplinary staffing conferences; ii) taught in classes in which the teacher student ratio is 1 to 8; and iii) provided with needed related services such as speech-language assessment and instruction, other learning disabilities assessment and instruction and social work services.

33. CCJ School students, both special education and non-special education eligible, who attempt to enroll in their neighborhood Chicago public school after release from the CCJ are routinely denied admission solely because of their status as ex-pretrial detainees. Defendants Chicago Board and Kimbrough have no liaison or transition programs or staff available to assure that each detainee released from the CCJ who is eligible for enrollment in a public school is able to take advantage of his/her right to such enrollment and is not refused admission because of his/her status as an ex-pretrial detainee.

34. Defendants Chicago Board and Kimbrough have failed to implement any system for: i) notifying CCJ detainees of the availability of, and their potential eligibility for, special education services; ii) notifying CCJ detainees of any procedures

by which they can exercise their right to such services and contest their deprivation of such right, and; iii) determining after the aforesaid notice and hearing the educational eligibility and needs of each CCJ detainee who requests special educational services. As a result of defendants' failure to implement such a system, the majority of plaintiff class members have been deprived of their right to special education services without having knowledge of such right and without having had an opportunity to contest their deprivation of such right.

35. On August 21, 1992, the Office for Civil Rights of the United States Department of Education (hereinafter "OCR") determined that the Chicago Public School District was in violation of § 504 for failing to provide a free appropriate public education to all youthful detainees with disabilities at the CCJ. OCR arranged a settlement agreement with the Chicago Board to resolve its failure to comply with § 504. According to this settlement, the Chicago Board agreed to make available to all detainees eligible for and wanting special education services a free appropriate education, provided such detainees can be expected to remain at the CCJ more than 30 days. The agreement provided further that the Chicago Board will implement procedures to: a) identify within 10 days of notice of their availability for screening detainees who are suspected of, or who have been found to have, disabilities requiring special education or related services; b) evaluate within 60 days of identification such detainee's need for special education and develop and implement an individualized

educational program; and c) provide educational services to detainees once they are suspected of having, or have been found to have, a disability, provided they want such services and can be expected to remain at the CCJ for more than 30 days.

36. Rather than taking the steps necessary to implement the terms of this settlement agreement with OCR, the Chicago Board and Kimbrough have further reduced the already inadequate availability of special education programs to eligible detainees. On August 28, 1992, shortly after the OCR Settlement Agreement, the Chicago defendants ordered the CCJ School staff to make the following program reductions: 1) reduce the school year from 52 weeks to 39 weeks; 2) eliminate 9 staff positions, including four teacher positions, and; 3) reduce the CCJ School budget from \$4 million to \$2-\$3 million. These defendants made these reductions in the CCJ School's budget in spite of the July, 1991 request by the Sheriff of Cook County, the official with ultimate governmental responsibility for the CCJ, that the Chicago Board double the current capacity of the CCJ School program in light of the unprecedented overcrowding at the CCJ and the scheduled opening of fourteen new classrooms.

37. The CCJ School's reduction in budget, in the length of the school year and in staff positions will further deprive CCJ detainees who are eligible for and in need of special education and related services of their right to a free appropriate public education. Besides adding to the overcrowding of special education classes and a reduction in the number of eligible detainees who can

be served at the CCJ School, these reductions have virtually eliminated the CCJ School staff's capacity to: i) provide timely initial evaluations of and multidisciplinary staffings for their special education students; ii) provide such students with social work services; iii) provide such students with related services and; iv) provide such students with transition or liaison services to enable them to return to their home schools or alternative education programs after release.

38. Plaintiffs are suffering immediate and irreparable harm from the defendants' actions, omissions, policies and practices complained of herein and will continue to suffer such harm unless defendants are enjoined. Plaintiffs have no adequate remedy at law.

LEGAL VIOLATIONS

39. Defendants Illinois Board, Board members and Leininger have violated and continue to violate plaintiffs' rights under the IDEA, 20 U.S.C. §§ 1400 et seq. and its implementing regulations at 34 C.F.R. §§ 300 et seq and under § 504 and its implementing regulations at 34 C.F.R. §§ 104 et seq by:

a. failing to assure for all children with disabilities as defined by 34 C.F.R. § 300.5 until age 21 or successful completion of their secondary program (23 Ill. Admin. Code § 226.120) the right to a free appropriate public education as defined by 34 C.F.R. § 300.4 (20 U.S.C. §§ 1412(1) and (2)(B), 1414(a)(2) and (6), 34 C.F.R. §§ 300.1(a), 300.121(a), 300.300(a));

b. failing to provide special education and related services to youthful detainees at CCJ after it has been made clear that the Chicago Board is unable or unwilling to establish and maintain programs of free appropriate public education for those detainees (20 U.S.C. § 1414(d)).

c. failing to have policies and procedures to assure that all detainees with disabilities who are in need of special education regardless of the severity of their disabilities are identified, located and evaluated (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. §§ 300.128(a)(1)), 300.220);

d. failing to have policies and procedures to assure that a practical method is developed and implemented to determine which detainees are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. § 300.128(a)(2));

e. failing to develop monitoring policies and procedures to assure that the Illinois Board both (i) knows the number of handicapped detainees within each disability category that have been identified, located and evaluated and (ii) obtains information adequate to evaluate the effectiveness of its policies and procedures in meeting its obligations under paragraphs c and d of this paragraph (34 C.F.R. § 300.128(b)(5));

f. failing to assure that the Chicago Board develops and implements an individualized education program for each detainee with a disability (34 C.F.R. § 300.341(a));

g. failing to assure that the Chicago Board maintains records of the IEP for each school-age detainee with a disability and that the IEP for each detainee shall be established, reviewed and, if necessary, revised (20 U.S.C. § 1412(4), 34 C.F.R. § 300.130(a));

h. failing to provide for procedures for evaluation of the effectiveness of programs, including IEPs, in meeting the educational needs of school-age detainees with disabilities (20 U.S.C. § 1413(a)(11));

i. failing to assure that disabled students in the CCJ School are provided special education services that are comparable in kind and quality to the services the Chicago Board provides for disabled and non-disabled students in regular and special education programs outside of the CCJ School (20 U.S.C. § 1414(a)(2)(c), 34 C.F.R. § 300.231(b), Section 504, 34 C.F.R. §§ 104.33(b) and 104.34(c));

j. failing to assure that there is an adequate supply of qualified special education and related services personnel (20 U.S.C. §§ 1413(a)(3)(A), 1414(a)(1)(C)(i));

k. failing to assure that the special education and related services personnel are appropriately and adequately prepared and trained (20 U.S.C. §§ 1413(a)(3)(B) and (a)(14), 1414(a)(1)(C)(i), 34 C.F.R. § 300.153(b)(1));

l. failing to assure that it and the Chicago Board maintain genuine procedural safeguards for school-age detainees with disabilities and their parents or guardians (20 U.S.C. §§

1412(5)(A), 1414(a)(7), 1415, 34 C.F.R. §§ 300.131, 300.501, 300.506);

m. failing to assure that the Chicago Board provides written notice to the parents or guardians of school-age detainees with disabilities informing them of the available procedural safeguards whenever the Chicago Board proposes or refuses to initiate or change the identification, evaluation, educational placement or free appropriate public education of the detainees (20 U.S.C. § 1415(b)(1)(C), (D), 34 C.F.R. §§ 300.504, 300.505));

n. failing to evaluate at least annually the effectiveness of the Chicago Board's programs, including IEPs, in meeting the educational needs of detainees with disabilities (20 U.S.C. § 1413(a)(11), 34 C.F.R. § 300.146);

o. failing to assure the Chicago Board's compliance with all requirements of the IDEA. (20 U.S.C. § 1412(6), 34 C.F.R. § 300.600)

40. Defendants Chicago Board and Kimbrough have violated and continue to violate plaintiffs' rights under the IDEA, 20 U.S.C. §§ 1400 et seq. and its implementing regulations at 34 C.F.R. §§ 300 et seq and under § 504 and its implementing regulations at 34 C.F.R. §§ 104 et seq by:

a. failing to provide for all children with disabilities as defined by 34 C.F.R. § 300.5 until age 21 or successful completion of their secondary program (23 Ill. Admin. Code § 226.120) a free appropriate public education as defined by 34

C.F.R. § 300.4 (20 U.S.C. §§ 1412(1) and (2)(B), 1414(a)(2) and (6), 34 C.F.R. §§ 300.1(a), 300.121(a), 300.300(a));

b. failing to identify, locate and evaluate all school-age detainees at CCJ with disabilities who are in need of special education regardless of the severity of their disabilities (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. §§ 300.128(a)(1), 300.220);

c. failing to develop and implement a practical method for determining which school-age detainees at CCJ are currently receiving needed special education and related services and which are not. (20 U.S.C. §§ 1412(2)(C), 1414(a)(1)(A), 34 C.F.R. § 300.220);

d. failing to conduct a meeting, for the purposes of developing an IEP, within 30 days of a determination that a school-age detainee at CCJ needs special education and related services (34 C.F.R. § 300.343(c));

e. failing to provide an IEP for each school-age detainee at CCJ with a disability (20 U.S.C. § 1414(a)(5), 34 C.F.R. § 300.342);

f. failing to consult with individuals involved in or concerned with the education of school-age detainees at CCJ with disabilities, including their parents (20 U.S.C. §§ 1412(7), 1414(a)(1)(C)(iii), 34 C.F.R. §§ 300.226, 300.345);

g. failing to maintain records on the IEPs for each school-age detainee at CCJ with a disability so that the IEPs can

be reviewed and, if necessary, revised (20 U.S.C. § 1412(4), 34 C.F.R. § 300.130(a));

h. failing to review each IEP and, if appropriate, to revise the IEP to better meet the needs of the school-age detainees with disabilities (20 U.S.C. § 1414(a)(5), 34 C.F.R. §§ 300.130(a), 300.343(d));

i. failing to provide disabled students in the CCJ School special education services that are comparable in kind and quality to the services it provides for disabled and non-disabled students in regular and special education programs outside of the CCJ School (20 U.S.C. § 1414(a)(2)(c), 34 C.F.R. § 300.231(b), 34 C.F.R. §§ 104.33(b) and 104.34(c));

j. failing to assure that there is an adequate supply of qualified special education and related services personnel at CCJ School (20 U.S.C. §§ 1413(a)(3)(A), 1414(a)(1)(C)(i));

k. failing to assure that the special education and related services personnel at CCJ School are appropriately and adequately prepared and trained (U.S.C. §§ 1413(a)(3)(B) and (a)(14), 1414(a)(1)(C)(i));

l. failing to maintain genuine procedural safeguards for school-age detainees at CCJ with disabilities and their parents or guardians (20 U.S.C. §§ 1412(5)(A), 1414(a)(6) and (7), 1415, 34 C.F.R. §§ 300.237, 300.501, 300.506);

m. failing to provide written notice to parents of school-age detainees at CCJ with disabilities, informing them of the available procedural safeguards whenever the Chicago Board

proposes or refuses to initiate or change the identification, evaluation, educational placement or free appropriate public education of children (20 U.S.C. § 1415(b)(1)(C), (D), 34 C.F.R. §§ 300.504, 300.505); and

n. failing to assure and guarantee compliance with all requirements of the IDEA and its implementing regulations (34 C.F.R. § 300.231(a)).

41. It is the policy of defendants to comply with all of the statutory and regulatory requirements set forth in paragraphs 19 and 20 above in regard to their provision of special education and related services to students who are not pretrial detainees. Defendants' failure to provide plaintiffs with the special education and related services and procedural safeguards that defendants provide persons similarly situated to plaintiffs except for their status as pretrial detainees denies plaintiffs the equal protection of the law under the Fourteenth Amendment to the United States Constitution.

42. Defendants' denial of all special education and related services to certain plaintiffs who are eligible for and in need of such services violates those plaintiffs' right to substantive due process of law under the Fourteenth Amendment to the United States Constitution by putting them at an inordinate risk of intellectual deterioration and life-long illiteracy and economic dependency.

43. Defendants' failure to implement any system for i) notifying school-age CCJ detainees of the availability of, and their potential eligibility for, special education and related

services; ii) notifying CCJ detainees of any procedures by which they can exercise their right to such services and contest their deprivation of such right, and; iii) determining after the aforesaid notice and hearing the educational eligibility and needs of each CCJ detainee who requests special educational services denies plaintiffs' right to procedural due process of law under the Fourteenth Amendment to the United States Constitution.

COUNT II: REGULAR EDUCATION

Factual Statement

44. Illinois Rev. Stat. Ch. 122 § 10-20.12 (1991) mandates that the Chicago Board secure for all persons within its school district who are older than 5 and younger than 21 the right and opportunity to an equal education by establishing and operating a sufficient number of free schools.

45. The Chicago Board makes free secondary education services available to non-pretrial detainees who are under 21, reside within the City of Chicago and have not received a high school diploma.

46. The Chicago Board currently provides a program of regular education services for a few eligible school-age CCJ detainees. However, the Chicago Board and Kimbrough, with the acquiescence of the State defendants, have failed to develop and implement policies to provide regular education services to all of the eligible detainees in the CCJ who desire regular education services. According to the Chicago Defendants' own data, in October 1992. The Chicago Board was not providing educational

services to approximately 1,500 CCJ school-age detainees.

47. The program of regular educational services that the Chicago Board does provide to school-age detainees lacks the teachers and materials necessary to provide such detainees educational services equal to those defendants provide to students who are not pretrial detainees. Because the CCJ School program offers school-age detainees instruction in little more than reading and math, students are deprived of instruction in subjects such as vocational education, art, social studies, and science, which subjects are made available by defendants to students of equivalent ages and grade levels who are not pre-trial detainees. Further, CCJ School students are deprived of the basic materials of education, including textbooks, workbooks, writing paper and pencils which are necessary for effective learning and are made available to students of equivalent ages and grade levels who are not pre-trial detainees.

48. State and local government has a critical interest in making education available to all eligible school age youths and has no interest in denying educational services to otherwise eligible school-age youth on the ground that such youth are pre-trial detainees. To the contrary, state and local government has a heightened interest in providing education to such youth because of education's critical importance in enabling such youth to obtain future employment and to avoid future involvement in criminal activity. This interest is of even greater significance in the context of the CCJ detainee population in which substantial numbers

context of the CCJ detainee population in which substantial numbers of pretrial detainees under the age of 21 do not possess the basic minimal skills necessary for the enjoyment of the rights of speech, for full participation in the political process and for minimal economic self-sufficiency.

49. Defendants' failure to provide, or assure the provision of, regular educational services to otherwise eligible pretrial detainees on an equal basis with the educational services that are provided to persons who are similarly situated to plaintiffs except for the fact they are not pretrial detainees is not substantially or even rationally related to any valid governmental interest. There is, in addition, no substantial or rational basis for defendants' failure to provide regular educational services to otherwise eligible CCJ pretrial detainees when the State of Illinois makes available through School District # 428 such services to convicted persons who are incarcerated in the Illinois Department of Corrections.

50. Because the plaintiff class is incarcerated and continually changing in membership, plaintiffs cannot compete for their fair share of educational resources on an equal basis with groups whose members are not incarcerated. Because the plaintiff class is primarily Afro-American and Hispanic, it is associated with racial groups that historically have been discriminated against and the recipients of inadequate, unequal educational

resources. The plaintiff class is further disadvantaged in seeking a fair share of educational resources because of the public stigma associated with its members' status as accused criminals.

51. Defendants have failed to implement any system for i) notifying school-age CCJ detainees of the availability of, and their potential eligibility for, regular education services; ii) notifying CCJ detainees of any procedures by which they can exercise their right to such services and contest their deprivation of such right, and; iii) determining after the aforesaid notice and hearing the educational eligibility and needs of each CCJ detainee who requests regular educational services. As a result of defendants' failure to implement such a system, the majority of plaintiff class members have been deprived of their right to regular education services without having knowledge of such right and without having had an opportunity to contest their deprivation of such right.

52. Plaintiffs are suffering immediate and irreparable harm from the defendants' actions, omissions, policies and practices complained of herein and will continue to suffer such harm unless defendants are enjoined. Plaintiffs have no adequate remedy at law.

LEGAL VIOLATIONS

53. By failing to protect the plaintiff class from the arbitrary and invidious actions of the Chicago defendants alleged in ¶¶ 46, 47 and 51 above, defendants Illinois Board members and Leininger have violated their legal duties regarding the education

of students with and without disabilities pursuant to Ill. Rev. Stat. Ch.122 § 2-3.3 ("to supervise all the public schools in the State"), Ill. Rev. Stat. Ch. 122 § 2-3.6, ("to make rules necessary to carry into efficient and uniform effect all laws for establishing and maintaining free schools in the State,") and, Ill. Rev. Stat. Ch. 122 § 2-3.25, ("to determine for all types of schools conducted under this Act (conferring powers and duties on the State Board) efficient and adequate standards for the . . . instruction and teaching, curriculum, library operation, maintenance, administration and supervision, and to issue, refuse to issue or revoke certificates of recognition for schools or school districts pursuant to standards established (under the Act). . . .").

54. By intentionally failing to develop and implement policies sufficient to provide regular educational services to all eligible school-age detainees in the CCJ on an equal basis with the services provided non-pretrial detainees, defendants Leininger, members of the Illinois Board of Education, Kimbrough and the Chicago Board of Education have violated and continue to violate plaintiffs' rights to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. These defendants' denial of all education services to many plaintiffs who do not possess the basic minimal skills necessary for the enjoyment of the rights of speech, for full participation in the political process and for minimal economic self-sufficiency, in addition,

denies such detainees their constitutional right to due process of law under the Fourteenth Amendment.

55. The failure of defendants Leininger, members of the Illinois Board of Education, Kimbrough and the Chicago Board to implement any system for i) notifying school-age CCJ detainees of the availability of, and their potential eligibility for, regular education services; ii) notifying CCJ detainees of any procedures by which they can exercise their right to such services and contest their deprivation of such right, and; iii) determining after the aforesaid notice and hearing the educational eligibility and needs of each CCJ detainee who requests regular educational services violates plaintiffs' right to procedural due process of law.

COUNT III: STATE LAW COUNT AGAINST THE CHICAGO BOARD

56. As paragraph 56 of Count III, plaintiffs reallege and incorporate herein paragraphs 1 through 38 and 44 through 52 above.

57. By failing to provide any regular education services to many school-age detainees under the age of 21 who have not graduated from high school and who desire to continue with their education by receiving regular educational instruction while incarcerated at the CCJ, the Chicago Board has violated its statutory duties under Ill. Rev. Stat. Ch. 122 § 10-20.12 (1991).

58. By denying to those school-age detainees who are enrolled in the limited regular education program provided by the Chicago Board sufficient teachers, materials and instruction necessary to provide such detainees with educational services equal to those the Chicago Board provides to students who are not pretrial detainees,

the Chicago Board has violated its statutory duty under Ill. Rev. Stat. Ch. 122 § 10-20.12 (1991).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request on behalf of themselves and the plaintiff class the following relief:

1. Issue a declaratory judgment that the defendants' actions, omissions, policies and practices complained of herein violate rights guaranteed to members of the plaintiff class by i) the IDEA, 20 U.S.C. §1400 et seq. and its implementing regulations at 34 C.F.R. § 300 et seq. ii) § 504 and its implementing regulations at 34 C.F.R. §§ 104 et seq. and iii) the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

2. Issue a preliminary and permanent injunction enjoining all of the defendants their agents, employees, successors in office and assigns from engaging in the omissions, policies and practices complained about above regarding their duties under the IDEA and Section 504.

3. Issue a preliminary and permanent injunction compelling defendants Illinois Board members, Leininger, the Chicago Board and Kimbrough, their agents, employees, successors in office and assigns from engaging in the omissions, policies and practices complained about above regarding their duties under the Fourteenth Amendment to the United States Constitution.


4. Issue a preliminary and permanent injunction compelling defendants to develop in consultation with the attorneys for

plaintiffs and to submit a plan to the Court that will insure the effective and expeditious implementation of their duties as specified above.

5. Issue a declaratory judgment that the defendants Chicago Board and Ted. D. Kimbrough by their actions, omissions, policies and practices alleged in paragraphs 57 and 58 above have violated rights guaranteed to plaintiffs by Ill. Rev. Stat. Ch. 122 § 10-20.12 (1991) and issue a preliminary and permanent injunction enjoining Defendants Chicago Board and Ted. D. Kimbrough their agents, employees, successors in office and assigns from engaging in the omissions, policies and practices complained about in paragraphs 57 and 58 above.

6. Award costs and attorney's fees on behalf of plaintiffs.

7. Grant such other or additional relief as this court may deem just and proper.


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