

GUAM LEGAL SERVICES CORPORATION
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Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT COURT OF GUAM

<p>J.C., a person with a disability, A.B., a person with a disability, M.B., a person with a disability J.B., a person with a disability, and E.Q., a person with a disability</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>JON FERNANDEZ, in his official capacity as Superintendent, Guam Department of Education</p> <p style="text-align: right;">Defendant.</p>	<p>CIVIL CASE NO. <u>CIV</u></p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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I. INTRODUCTION

1. Plaintiffs, J.C., A.B., M.B., J.B. and E.Q., through their parents, legal guardians and through their counsel, DANIEL S. SOMERFLECK of Guam Legal Services Corporation – Disability Law Center (“GLSC-DLC”), bring this action alleging that Defendant Fernandez has systematically failed in his official capacity as a matter of policy and practice, to provide the necessary and statutorily guaranteed educational services pursuant to their Individualized Education Program (IEP).

2. Plaintiffs seek declaratory and injunctive relief requiring Defendants to implement an in-person Extended School Year (ESY) program that encompasses the instruction and related services as

stipulated in the Plaintiffs' IEP.

II. JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over these claims pursuant to 28 U.S.C. §§1331 and 2201. Plaintiffs bring this suit under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400-1481 (2006). Declaratory relief is sought under 28 U.S.C. §2201.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391, because the claims arise within the District of Guam.

5. Plaintiffs are individuals with IEPs and reside in the Territory of Guam.

6. Defendants have the responsibility of providing educational services included in the Plaintiffs' IEP.

III. PLAINTIFFS

7. J.C. is a student with a disability and the remaining Plaintiffs, A.B., M.B., J.B., and E.Q. are students with Autism (PLAINTIFFS). The Plaintiffs are students within Guam Department of Education (DEFENDANT) and are eligible under the Individuals with Disabilities Education Act and, through their parents or guardians, have an IEP with the Defendants. The IEP stipulates that the Plaintiffs are to each receive Extended School Year services for 4 hours a day for 4 weeks to include at least 1 specialized para-educator and other related services.

IV. DEFENDANT

8. Defendant Jon Fernandez is the Superintendent of Guam's Department of Education (GDOE) and is being sued in his official capacity. The Superintendent of Education (the Superintendent) shall be the Chief Executive Officer of the internal operating organization of the Department of Education and shall be responsible for the administration of the academic and services

activities thereof.

V. ALLEGATIONS

9. GDOE is a public education system in the Territory of Guam and receives federal funds under the IDEA on the condition that the funds are used in compliance with specific goals and procedures. Its primary obligation is to provide a Free Appropriate Public Education (FAPE) 20 U.S.C. §1412, and an IEP to meet the educational needs for every child with a disability 20 U.S.C. §1401.

10. The IEP is crafted to meet the unique needs of a child with a disability. It is formulated by a team that includes representatives of GDOE, teachers, and parents, and when appropriate, the child with the disability. 20 U.S.C. §1414(a)(5). Each of the Plaintiffs have a written IEP which includes the ESY for 4 hours each day for 4 weeks and at least one paraprofessional 1:1 aide. Each of the Plaintiffs herein filed a due process claim for ESY services on June 18, 2020. The IDEA provides a stay-put provision while the due process challenge is pending. GDOE has responded to each of the Plaintiffs request for due process with the same letter asserting the 30 day resolution following a resolution period of 45 days before a decision must be entered into the due process proceedings (see Declaration of CK). Under GDOE's timeline, it would be impossible to provide the mandated 4 weeks of extended school year instruction. To obtain the 4 weeks of additional instruction, the extended school year must start no later than July 13, 2020, since the regular school year is scheduled to commence August 11, 2020. GDOE will fail to meet its statutory mandates under the IDEA by failing to comply with Plaintiffs current educational placement for educational services.

11. There is no basis to assert that the public schools cannot provide educational services based upon the Plaintiffs IEP, when in fact, the Governor created an exception for a pilot

program to assist in the opening of schools in the Executive Order 2020-20 dated June 5, 2020. At least one other school on Guam opened on June 6, 2020 pursuant to Executive Order 2020-20. See Declaration of Crystal Koch.

VI. DEMAND FOR RELIEF

Wherefore, the Plaintiffs respectfully request that the Court:

1. Enter a temporary, preliminary and permanent injunction enjoining Defendant to provide Plaintiffs current educational placement as provided in the Plaintiff current IEP including but not limited to providing in school 4 hours each day for 4 weeks with a 1:1 specialized para-professionals of ESY with the other mandated provisions in the IEP .

2. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted: July 1, 2020

GUAM LEGAL SERVICES CORPORATION
Attorneys for Plaintiffs

By: 

DANIEL S. SOMERFLECK
Executive Director

VERIFICATION

I, JOHN PEREDA CEPEDA, am the parent of Plaintiff J.C. in the above-entitled matter; and I declare under the penalty of perjury, that the foregoing statements are true and correct and to the best of my own knowledge, except as to matters which are therein stated on my information or belief; and as to those matters I believe them to be true.

Dated: 7/1/2020




JOHN PEREDA CEPEDA
Parent for Plaintiff J.C.

VERIFICATION

I, ANNA BERMUDEZ, am the parent of Plaintiffs A.B. and M.B. in the above-entitled matter; and I declare under the penalty of perjury, that the foregoing statements are true and correct and to the best of my own knowledge, except as to matters which are therein stated on my information or belief; and as to those matters I believe them to be true.

Dated: July 1, 2020




ANNA BERMUDEZ
Parent for Plaintiffs A.B. and M.B.

VERIFICATION

I, ROSETTA SAN NICOLAS, am the parent of Plaintiff J.B. in the above-entitled matter; and I declare under the penalty of perjury, that the foregoing statements are true and correct and to the best of my own knowledge, except as to matters which are therein stated on my information or belief; and as to those matters I believe them to be true.

Dated: 7/1/2020



ROSETTA SAN NICOLAS
Parent for Plaintiff J.B.

VERIFICATION

I, WELMA QUINATA, am the parent of Plaintiff E.Q. in the above-entitled matter; and I declare under the penalty of perjury, that the foregoing statements are true and correct and to the best of my own knowledge, except as to matters which are therein stated on my information or belief; and as to those matters I believe them to be true.

Dated: July 1, 2020



WELMA QUINATA
Parent for Plaintiff E.Q.