

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**UTICA CITY SCHOOL DISTRICT BOARD OF
EDUCATION, UTICA CITY SCHOOL DISTRICT**
and **BRUCE J. KARAM**, Superintendent of
Utica City School District, in his official capacity,

Defendants/Third Party
Plaintiffs,

**THIRD PARTY
COMPLAINT**

Case No.

vs.

**MOHAWK VALLEY RESOURCE CENTER
FOR REFUGEES,**

Third Party Defendant.

The Third Party Plaintiffs, through their attorney, Donald R. Gerace, Esq., complain of the Third Party Defendant as follows:

JURISDICTIONAL STATEMENT

1. The Court has jurisdiction of this action pursuant to Rule 14 of the Federal Rules of Civil Procedure in that jurisdiction of the main action is pursuant to 20 U.S.C. §1703, 42 U.S.C. §2000(d), et seq. and 42 U.S.C. §1983 as well as 28 U.S.C. §§1331, 1343(a)(3) and 1367.

VENUE

2. This action properly lies in the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §1391(b) because the claims alleged in the main action as well as this third party action arose in this judicial district.

PRELIMINARY STATEMENT

3. This is a third party action brought to recover monetary damages against the named Third Party Defendant for whatever monetary damages, if any, that are assessed to the Third Party Plaintiffs in the main action. The main action alleges that the Defendants have a policy and practices of excluding limited English proficient (LEP) immigrants aged 17-20 from enrolling at Thomas R. Proctor High School (Proctor High School) in Utica, New York. The main action was brought on behalf of six refugees, Patrick Tuyizere, Suk Maya Rai, BBT by her parent and natural guardian Birkha Bolon, Ali Janar, Cho Cho Win and Ado Lar and a class of similarly situated individuals. Said action was brought against the Defendants/Third Party Plaintiffs in their capacity as state actors. Said action requests declaratory, injunctive and monetary relief against the Defendants/Third Party Plaintiffs.

PARTIES

4. The named Plaintiffs in the main action are Patrick Tuyizere, Suk Maya Rai, BBT by her parent and natural guardian Birkha Bolon, Ali Janar, Cho Cho Win and Ado Lar.

5. The Defendant/Third Party Plaintiff Utica City School District Board of Education (hereinafter "BOE") is an elected board which has the general control, management and responsibility of the Utica City School District.

6. Defendant/Third Party Plaintiff Utica City School District (hereinafter "UCSD") is a public school district in and for the City of Utica.

7. Defendant/Third Party Plaintiff Bruce J. Karam is the Superintendent of Schools of the Utica City School District.

8. Third Party Defendant Mohawk Valley Resource Center for Refugees (hereinafter "Refugee Center") is a New York State Domestic Not-For-Profit Corporation with principal offices located at 309 Genesee Street, Utica, New York. Said Refugee Center is typically the first point of contact for refugees immigrating to the City of Utica. The Refugee Center is a recipient of federal financial assistance.

FACTS

9. The Refugee Center was founded on May 14, 1981 to assist refugees immigrating to the Utica area with their relocation efforts. The Refugee Center provides translator services, community services and educational services for both adult and school-age members of said refugee population.

10. The Refugee Center employs caseworkers and interpreters who meet with incoming refugees to assist the same with their needs.

11. The Refugee Center has provided a Newcomer Program for newly arrived 17-21 year old refugees which consists of instruction in the English language, employment preparation, computer instruction and referrals to High School Equivalency (GED) programs since 2013.

12. Since 2013, the Third Party Plaintiffs have had no administrative, managerial, funding or placement control over the Refugee Center's Newcomer Program.

13. As one of the first and main points of contact with refugees immigrating to the Utica area, the Refugee Center has assumed the duty to the Third Party Plaintiffs and the Plaintiffs in the main action to provide information to said refugees as to what community and educational services are available to said refugees and to refer said refugees to the available and appropriate educational institutions that said refugees qualify for and are entitled to pursuant to the Equal Educational Opportunities Act of 1974 (20 U.S.C. §1703) and New York Education Law §3202.

14. As part of the aforementioned duty of the Refugee Center, it had an obligation to notify the Plaintiffs in the main action as to what educational services and programs were available to said Plaintiffs and the manner in which to make application for such educational services and programs.

15. As part of the aforementioned duty of the Refugee Center, it had an obligation to notify the Third Party Plaintiffs of the existence of educationally eligible refugees residing within the Utica City School District attendance area who wished to attend school in the Utica City School District or appropriate alternative education programs available to said refugees.

16. As part of the aforementioned duty of the Refugee Center, it had an obligation to refer to the Third Party Plaintiffs those educationally eligible refugees residing within the Utica City School District attendance area who wished to enroll in school in the Utica City School District for attendance purposes.

17. Upon information and belief, the source and grounds for said belief being the allegations contained in the Complaint filed in the main action, the Refugee Center's directors, administrators, caseworkers, agents and/or translators, failed to correctly notify the Plaintiffs in the main action as to what educational services and programs were available to said Plaintiffs in the Utica City School District.

18. Upon information and belief, the source and grounds for said belief being the same as alleged in Paragraph "17" above, the Refugee Center's directors, administrators, caseworkers, agents and/or translators incorrectly and negligently advised the Plaintiffs in the main action that they were not eligible to enroll and attend school in the Utica City School District based upon their respective ages.

19. Upon information and belief, the source and grounds for said belief being the same as alleged in Paragraph "17" above, the Refugee Center's directors, administrators, caseworkers, agents and/or translators negligently failed to advise the Plaintiffs in the main action as to how to make application for enrollment in the Utica City School District.

20. Upon information and belief, the sources and grounds being the same as alleged in Paragraph "17" above, the Refugee Center's directors, administrators, caseworkers, agents and/or translators negligently failed to notify the Utica City School District of the Plaintiffs' existence and their desire to enroll in the Utica City School District to attend Proctor High School.

AS AND FOR A FIRST CAUSE OF ACTION

21. The Third Party Plaintiffs restate, reallege and incorporate by reference the allegations in the foregoing Paragraphs of this Complaint as if fully set forth herein.

22. Through the actions and inactions of its directors, administrators, caseworkers, agents and/or translators as set forth above, the Refugee Center negligently failed to take appropriate action on behalf of the Third Party Plaintiffs and the main action Plaintiffs to properly inform the main action Plaintiffs as to what educational services and programs that were available to said Plaintiffs in the Utica City School District and the manner in which to make application for such educational services and programs.

23. Through the actions and inactions of its directors, administrators, caseworkers, agents and/or translators, the Refugee Center negligently failed to notify the Third Party Plaintiffs of the existence of educationally eligible refugees, including the main action Plaintiffs, residing within the Utica City School District attendance area who wished to attend school in the Utica City School District.

24. Through the actions and inactions of its directors, administrators, caseworkers, agents and/or translators as set forth above, the Refugee Center failed to refer to the Third Party Plaintiffs those educationally eligible refugees, including the main action Plaintiffs, who wished to enroll in the Utica City School District for attendance purposes.

25. Through the actions and inactions of its directors, administrators, caseworkers, agents and/or translators as set forth above, the Refugee Center negligently advised the main action Plaintiffs that they were not eligible to enroll and attend school in

the Utica City School District based upon their respective ages in violation of the Third Party Plaintiffs' policies, Federal Law and State Law.

26. Through the actions and inactions of its directors, administrators, caseworkers, agents and/or translators as set forth above, the Refugee Center negligently failed to properly advise and instruct the main action Plaintiffs as to how to make application for enrollment in the Utica City School District.

27. Solely as a result of the Refugee Center's negligence, the Third Party Plaintiffs were prevented from providing educational services to the main action Plaintiffs to the detriment of the Third Party Plaintiffs and the main action Plaintiffs.

28. Solely as a result of the Refugee Center's negligence, the main action Plaintiffs instituted the main action against the Third Party Plaintiffs thereby exposing the Third Party Plaintiffs to a potential damage award assessed on behalf of each main action Plaintiff against said Third Party Plaintiffs.

29. By reason of the foregoing, any damages to the main action Plaintiffs were caused solely and wholly by the negligence of the Refugee Center and without any negligence on the part of the Third Party Plaintiffs herein contributing thereto.

30. By reason of the foregoing, the Third Party Plaintiffs have been damaged in a sum to be determined upon a trial of these proceedings.

AS AND FOR A SECOND CAUSE OF ACTION

31. The Third Party Plaintiffs restate, reallege and incorporate by reference the allegations in the foregoing Paragraphs of this Complaint as if fully set forth herein.

32. The Refugee Center receives funding, in part, from New York State and Federal Funding Services, for the purpose of providing assistance to refugees immigrating to the Utica area in the areas of relocation, community services and educational services.

33. To the extent that the New York State and Federal Funds allocated to the Refugee Center are received as grants from said funding sources, the Refugee Center enters into a de facto contract with said funding sources to provide the services outlined in the application and awarded grants.

34. Upon information and belief, the sources and grounds being information available to the general public from the Refugee Center's website and promotional literature as well as from New York State and Federal Funding Sources, the Refugee Center has received public grant funds specifically, in part, to assist eligible refugees who have relocated to the Utica area with respect to enrollment in appropriate educational programs available to said refugees including, but not limited to, the Utica City School District, Oneida-Herkimer-Madison BOCES and programs offered by the Refugee Center itself, thus becoming a fiduciary to the Third Party Plaintiffs and main action Plaintiffs for the proper use of said grant funds.

35. The Third Party Plaintiffs and the main action Plaintiffs are third party beneficiaries of the Refugee Center's aforementioned grant contracts with its funding sources.

36. By failing to properly refer the main action Plaintiffs to the Third Party Plaintiffs for enrollment in the Utica City School District, the Refugee Center breached its

aforementioned contractual obligations to the Third Party Plaintiffs and the main action Plaintiffs.

37. By failing to notify the Third Party Plaintiffs of the existence of the main action Plaintiffs in the Utica City School District attendance area, the Refugee Center breached its aforementioned contractual obligations to the Third Party Plaintiffs and the main action Plaintiffs.

38. By incorrectly notifying the main action Plaintiffs that they were not eligible to enroll in the Utica City School District based upon their respective ages, the Refugee Center breached its aforementioned contractual obligations to the Third Party Plaintiffs and the main action Plaintiffs.

39. By reason of the foregoing, the Third Party Plaintiffs as third party beneficiaries have been damaged by the Refugee Center's breach of its contractual obligations under its respective grants.

40. By reason of the foregoing, the Third Party Plaintiffs demand judgment against the Refugee Center for Breach of Contract in an amount to be determined at a trial of this action.

AS AND FOR A THIRD CAUSE OF ACTION

41. The Third Party Plaintiffs restate, reallege and incorporate by reference the allegations in the foregoing Paragraphs of this Complaint as if fully set forth herein.

42. By reason of the Refugee Center's receipt of New York State and Federal grants for the purpose of providing assistance to eligible refugees immigrating to the Utica

area in enrollment for and receipt of educational programs in the Utica City School District, the Refugee Center became a fiduciary of said funds for the benefit of the Third Party Plaintiffs and the main action Plaintiffs.

43. By reason of the Refugee Center's improper notification to the main action Plaintiffs that they were not eligible to enroll in the Utica City School District because of their respective ages, the Refugee Center breached its fiduciary duty to the Third Party Plaintiffs and the main action Plaintiffs.

44. By reason of the Refugee Center's failure to notify the Third Party Plaintiffs of the existence of the main action Plaintiffs residing in the Utica City School District and their desire to attend school in the Utica City School District, the Refugee Center breached its fiduciary duty to the Third Party Plaintiffs and the main action Plaintiffs.

45. By reason of the Refugee Center's failure to refer and assist the main action Plaintiffs in enrollment in the Utica City School District, the Refugee Center breached its fiduciary duty to the Third Party Plaintiffs and the main action Plaintiffs.

46. As a result of the Refugee Center's breach of its fiduciary duty to the Third Party Plaintiffs, said Third Party Plaintiffs demand judgment against the Refugee Center in an amount to be determined by a trial of this action.

RELIEF REQUESTED

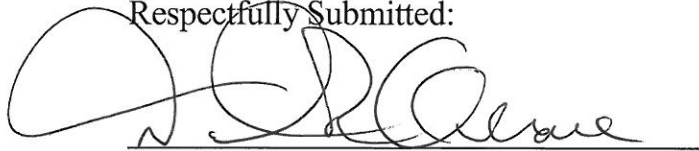
WHEREFORE, the Third Party Plaintiffs respectfully request the Court:

1. Grant Judgment in favor of the Third Party Plaintiffs on the First Cause of Action; and

2. Grant Judgment in favor of the Third Party Plaintiffs on the Second Cause of Action; and
3. Grant Judgment in favor of the Third Party Plaintiffs on the Third Cause of Action; and
4. Award the Third Party Plaintiffs reasonable attorney's fees and costs under 42 U.S.C. §1988 for defense of the main action as a result of the Third Party Defendant's actions; and
5. Grant any other relief the Court deems necessary and proper.

Dated: May 19, 2015

Respectfully Submitted:

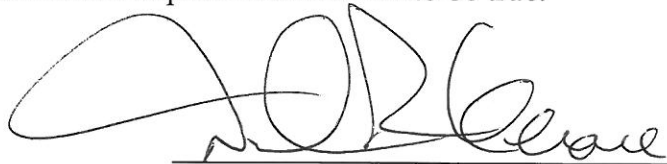
A handwritten signature in black ink, appearing to read "Donald R. Gerace", written over a horizontal line.

Donald R. Gerace, Esq.
Attorney for Third Party Plaintiffs
Bar Roll #101758
Office and P.O. Address
2613 Genesee Street
Utica, New York 13501
Tel. No. (315) 735-7509

VERIFICATION


STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

DONALD R. GERACE, ESQ., being duly sworn, deposes and says that deponent is the Attorney for the Third Party Plaintiffs in the within action; that deponent has read the annexed Third Party Complaint and knows the contents thereof and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.



Donald R. Gerace

Sworn to before me this
19th day of May, 2015



Notary Public - State of New York

Co. - Comm. Exp. _____

LESLIE K. HAMAN
Notary Public - State Of New York
Registered In Herkimer County
My Comm. Exp. May 20, 2019