

Federal Court Complaint - Right to Education

This Federal Court Complaint [DRAFT], filed week of March 24, 1997, is under IDEA, ADA, Rehabilitation Act, and seeks both damages and injunctive relief. It also seeks enforcement of a state level Appeals Panel decision in a Due Process case, and enforcement of an appropriate IEP.

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

MATTHEW CARR, by his parents, :
Esther and James Carr; :
ESTHER CARR; and :
JAMES CARR, :
:
Plaintiffs :
:
v. :
:
SCHOOL DISTRICT OF PHILADELPHIA; :
:
LYNETTE MASON; :
:
G.ELAINE WALLACE, [PRINCIPAL], and :
:
OKSANA TRABOCCO, :
:
Defendants

Jury Trial Demanded (for claims for damages only)

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action by Matthew Carr, an 8 year old student at a Philadelphia Public School, and his parents, to secure an appropriate public education which is being denied, knowingly, by the Defendant School District of Philadelphia, and the individual defendant school employees. Matthew Carr is entitled to a free appropriate public education in light of his disabilities, and such education is secured through an individualized education program (IEP) which must be implemented by Defendants, after participation in its development by Matthew Carr and his parents.

2. Matthew Carr, a youngster with severe learning disabilities, is nevertheless a child with

average to low average intelligence, who is capable of learning to read. Due to the denial of education by Defendants, Matthew Carr cannot read. Although Defendants knew precisely what environment and methods would be effective to teach him reading, the Defendants failed to provide that environment or to use those methods. Instead, they insisted on use of an environment and methods which they knew were failing, and would fail.

3. Reading is basic to citizenship and to membership in the community. A failure to learn to read at an early age is itself a handicap which can cripple the maturity and progress in our society of a person. The denial of the opportunity to read to Matthew Carr is an especially damaging act.

4. The Commonwealth of Pennsylvania maintains an Appeals Review Panel to make final state-level determinations of appropriate educational programs for children with disabilities. That Review Panel on March 12, 1997 determined that the Defendant School District of Philadelphia was violating Matthew Carr's rights under the federal right-to-education law, the Individuals with Disabilities Education Act (IDEA). Under the IDEA, the District has the right to appeal, but -- in the interim during judicial review -- the District has the obligation to implement the Appeals Review Panel decision. Here, the District has refused to implement that Appeals Review Panel decision, thereby subjecting Matthew Carr and his parents to both present denial of education, and to the potential for months or years of such denial.

5. The Defendants' actions violate the IDEA, the Rehabilitation Act of 1973, the Americans with Disabilities Act, and, due to their acting in concert with one another, 42 U.S.C. §1985, and other civil rights statutes. The Defendants are also liable for violation of state law rights due to their Fraud and Misrepresentation in connection with the IEP which, even with its flaws under federal law, the Defendants failed to implement according to its terms.

6. Injunctive relief (emergency, preliminary and final), and compensatory damages, and punitive damages, are sought, together with attorneys' fees and costs.

II. PLAINTIFFS

7. The Plaintiffs are MATTHEW CARR, an 8 year old student of the Defendant School District of Philadelphia, and his parents, ESTHER CARR and JAMES CARR.

8. Plaintiffs are residents of Pennsylvania, and citizens of the United States, and live at 514 Faunce Street, Philadelphia, PA.

III. DEFENDANTS

9. The Defendants are the local education authority under the federal right-to-education laws for children with disabilities, and several employees of the local education authority.

10. Defendant SCHOOL DISTRICT OF PHILADELPHIA, 21st. and Parkway, Room 502, Philadelphia, PA, is a local school district organized under the laws of Pennsylvania, and is the local education authority responsible and obligated under the Individuals With Disabilities

Education Act, to provide and implement for Plaintiff MATTHEW CARR an appropriate Individualized Education Plan (IEP).

11. Defendant LYNETTE MASON, is a special education teacher for Defendant SCHOOL DISTRICT OF PHILADELPHIA, and is responsible under federal law (the IDEA) for preparation and implementation of Plaintiff MATTHEW CARR's Individualized Education Plan (IEP).

12. Defendant ELAINE WALLACE, is a school principal for Defendant SCHOOL DISTRICT OF PHILADELPHIA, and is responsible under federal law (the IDEA) for supervision of Defendants LYNETTE MASON and OKSANA TRABOCCO, with regard to preparation of Plaintiff MATTHEW CARR's Individualized Education Plan (IEP), and approval of said IEP, and for ensuring that WALLACE's and the SCHOOL DISTRICT's representative to the IEP team, namely, Defendant OKSANA TRABOCCO, fulfills her duties.

13. Defendant OKSANA TRABOCCO, is a school counselor for Defendant SCHOOL DISTRICT OF PHILADELPHIA, and is responsible under federal law (the IDEA) for working with Defendant LYNETTE MASON with regard to preparation of Plaintiff MATTHEW CARR's Individualized Education Plan (IEP), and approval of said IEP, which IEP is challenged in this Complaint, and for fulfilling responsibilities as representative of Defendant ELAINE WALLACE and the Defendant SCHOOL DISTRICT OF PHILADELPHIA in the IEP process.

IV. JURISDICTION AND VENUE

14. This action arises under the Constitution and laws of the United States, and therefore this Court has jurisdiction pursuant to

28 U.S.C. §1331 (federal question);

28 U.S.C. 1343(a)(1), because it is an action to recover damages for injury to person or property, and for deprivation of rights or privileges of a citizen, by acts done in furtherance of a conspiracy under 42 U.S.C. §1985;

28 U.S.C. 1343(a)(2), because it is an action to recover damages from person or persons who failed to prevent or aid in preventing wrongs mentioned in 42 U.S.C. §1985 which he or she had knowledge were about to occur and power to prevent;

28 U.S.C. 1343(a)(3), because it is an action to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Constitution and laws of the United States providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and

28 U.S.C. 1343(a)(4), because it is an action to recover damages or to secure equitable relief and other relief under federal statutes for the protection of civil rights.

15. This action also arises under the following federal statutes:

The Individuals With Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.;

The Americans with Disabilities Act of 1990 (ADA), Pub.L. No. 101-336, 104 Stat. 327 (1990), 42 U.S.C. §§ 12101 et seq., made effective on July 26, 1990. which, at Title II of the ADA, prohibits discrimination in the provision of public services. Section 202 of the Act, 42 U.S.C. §12132 (Supp.1991).

The Rehabilitation Act of 1973, §§504 and 505, as amended, 29 U.S.C.A. §§794 and 794a.

16. This Court also has jurisdiction pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(e)(2). which provides for federal court review of decisions of the state agencies which review and determine students' rights to education and appropriateness of Individualized Education Plans (IEPs) under said statute. Section 1415(e)(2) provides that any party aggrieved by the findings and decision" of the state appellate procedure to "bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy." IDEA further provides that, in such an action, "the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. §1415(e)(2).

17. This Court has jurisdiction to enforce the decision of the Pennsylvania Department of Education Appeals Panel under both the IDEA and 42 U.S.C. §1983. See also, 20 U.S.C. §1415(f).

18. This Court also had jurisdiction to hear and determine this case pursuant to 42 U.S.C. §§1983, 1985, and 1988.

19. The amount in controversy, exclusive of interest and costs, exceeds \$200,000.

20. With regard to state law claims for fraud and misrepresentation, this Court has pendent jurisdiction.

21. Plaintiffs are entitled to emergency, preliminary and injunctive relief, under 28 U.S.C., F.R.Civ.P. 65, and under the laws of the United States. There is no adequate remedy at all. Plaintiff MATTHEW CARR, and Plaintiffs ESTHER CARR and JAMES CARR have suffered and will continue to suffer irreparable harm absent injunctive relief.

22. Venue is properly in this Court pursuant to 28 U.S.C. §1391, in that all parties reside in this District and the matters at issue arose in this District.

V. FACTS

A. Individuals With Disabilities Education Act (IDEA)

23. Under the "Individuals with Disabilities Education Act," (IDEA), Plaintiff MATTHEW CARR has a right to a free appropriate public education, geared to his unique individual needs, as a child with disabilities. That education must be provided by the state, and the specific details of the education are set forth in an Individualized Education Plan (IEP), which must be revised annually.

24. In 1975, Congress enacted legislation appropriating funds to help states defray the cost of educating children with disabilities, and to ensure protection of the rights of children with disabilities to education. Now known as the IDEA, the original law, then called the Education of the Handicapped Act, guaranteed, and the IDEA guarantees, that children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(c). Thus, the IDEA guarantees that all disabled children in states accepting federal funding for education for the disabled will receive a "free appropriate public education." 20 U.S.C. § 1415(a).

25. States and local agencies are required by the IDEA to comply with federal guidelines and regulations established to ensure the availability of a "free appropriate public education" for all of their disabled children. 20 U.S.C. § 1412(1). State and local compliance with the IDEA is monitored by federal review, see 34 C.F.R. §§104.61, 100.7, and by procedural safeguards extended to handicapped children and their parents.

26. The IDEA defines "disability" broadly to include children "with mental retardation, hearing impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities...." 20 U.S.C. § 1401(a)(1)(A) (emphasis added).

27. The IDEA procedures include the right of the parents to participate in the development of an 'individualized education program' (["IEP"]) for the child. 20 U.S.C. ss 1401(19), 1415(b), (d)-(e)).

28. The IDEA defines a "free appropriate public education" to mean "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with [an] individualized education program." 20 U.S.C. § 1401(18).

29. The IDEA's safeguards are intended to guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate. The Act repeatedly emphasizes the importance of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness. See §§ 1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(2)." Id.

30. The IDEA (1) requires that state educational agencies which receive federal assistance establish administrative procedures for resolving disputes as to the education of disabled children, and (2) provides certain criteria for those procedures. See 20 U.S.C. § 1415. These procedures are intended "to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units." 20 U.S.C. § 1415(a).

31. Where a child or his or her parents challenge an IEP, such challenges are resolved through a process which may result in judicial review, but which begins with a state-controlled system through which the state, here the Commonwealth of Pennsylvania, determines whether the school district's proposed IEP complies with federal law.

32. Under the IDEA, there is a three-stage dispute-resolution process. The initial stage is a hearing, at which the parties are afforded enumerated procedural protections. See § 1415(b), (d). Parties aggrieved by the findings and decision of the hearing process may appeal to the state's educational agency. See 20 U.S.C. § 1415(c). After decision by the state's educational agency, the IDEA permits an aggrieved party to file a civil action in federal court without regard to the amount in controversy. See 20 U.S.C. § 1415(e)(2). In Pennsylvania, the initial, hearing stage of the IDEA process is termed a "due process hearing."

The Required Placement and Program During Judicial Review under the IDEA

33. Where a school district's compliance with the IDEA is challenged, review of compliance may take months or years, and, therefore, important practical questions arise regarding the location and program for the child during the period of the review, especially because children with handicaps, like Plaintiff MATTHEW CARR, are likely to be especially injured by delays in providing the appropriate education mandated by the IDEA.

34. The IDEA therefore provides for "pendent placement," which identifies the location and program to be provided during the period of review. The IDEA provides that the placement and program during the review period be what is agreed between the parents and the state or local authorities. The pendent placement provision was included in the IDEA to protect handicapped children and their parents during the review process. §1415(e)(3).

35. A ruling by the education appeals panel in favor of the parents' position constitutes agreement for purposes of section 1415(e)(3). That section of the IDEA cannot be used as a weapon by the Defendant SCHOOL DISTRICT, and other DEFENDANTS to force Plaintiffs ESTHER and JAMES CARR to maintain Plaintiff MATTHEW CARR in a public school placement which the state appeals panel has held inappropriate.

36. Defendant SCHOOL DISTRICT OF PHILADELPHIA, subsequently to the ruling of the Pennsylvania Department of Education Appeals Panel in favor of PLAINTIFFS, has refused to obey or to implement the decision of that Appeals Panel during the federal review of that decision. Such refusal is flatly in violation of, and in defiance of, federal law set forth in the Individuals with Disabilities Education Act (IDEA). *Susquenita School Dist. v. Raelle S.*, 96

F.3d 78 (3d Cir. 1996) (reh. den.)

Rehabilitation Act of 1973

37. The IDEA, in positive terms, requires an appropriate education for children with disabilities. Congress' concern was exclusion of such children from the educational system. Section 504 of the Rehabilitation Act, 29 U.S.C § 794, is cast in negative terms, barring all federally funded entities (governmental or otherwise) from discriminating on the basis of disability.

Section 504 states, in relevant part:

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a).

38. As this portion of the Rehabilitation Act has been interpreted, there are few differences, if any, between IDEA's affirmative duty and § 504's negative prohibition.

39. Defendant SCHOOL DISTRICT receives federal financial assistance and is covered by Section 504.

The Americans with Disabilities Act of 1990

40. The Americans with Disabilities Act of 1990, at 42 U.S.C. § 12132, extends the nondiscrimination rule of section 504 of the Rehabilitation Act to services provided by any "public entity" (without regard to whether the entity is a recipient of federal funds).

41. Title II of the ADA prohibits discrimination in the provision of public services. Section 202 of the Act, _ 42 U.S.C. § 12132 (Supp.1991), provides:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42. Regulations promulgated by the Department of Justice under Title II of the ADA require a public entity to provide each service so that it, "when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a).

43. The ADA covers people who are disabled or who are "regarded" as disabled or have a "record" of disability. 42 U.S.C. 12102(2). Plaintiff MATTHEW CARR is disabled under the ADA.

44. Defendant SCHOOL DISTRICT OF PHILADELPHIA is a covered "public entity" under the ADA. Title II's definition of "public entity" includes "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. 12131(1)(B).

The Commonwealth of Pennsylvania's Determination of the Appropriate IEP

45. The Commonwealth of Pennsylvania's Department of Education, through the special Appeals Review Panel, has determined that the IEP provided by Defendant DISTRICT and the INDIVIDUAL DEFENDANTS to Plaintiff MATTHEW CARR is in violation of the IDEA, but the DEFENDANTS (the DISTRICT and the INDIVIDUAL DEFENDANTS) refuse to obey the law and implement the required IEP.

46. The Commonwealth of Pennsylvania Special Education Due Process Appeals Review Panel ("Appeals Review Panel"), determined in a March 12, 1997 Opinion and Order that the Defendant SCHOOL DISTRICT has violated the IDEA and deprived Plaintiff MATTHEW CARR of the "free appropriate public education" to which he is entitled. (Special Education Opinion No. 748, In Re the Educational Assignment of Matthew C., A Student in the School District of Philadelphia. This opinion and order are attached and incorporated by reference as if fully set forth herein in this Complaint. Exhibit A.

47. The Appeals Review Panel entered the following Order:

ORDER

Accordingly, this 12th day of March, 1997 the Hearing Officer's Decision and Order is reversed and those exceptions not addressed in this appeal and order are dismissed.

The District is thereby ordered to:

1) Revised and modify the proposed 1996-97 IEP such that it contains within the context of educational program:

(a) specially designed instruction including a reading system that is multisensory;

(b) one-on-one instruction in reading by a certified teacher delivered at least one hour per day five days per week;

(c) a designated separate space in which to deliver said specified instruction that is free of visual and auditory distraction;

2) To evaluate and provide when necessary any supplementary services or compensatory educational strategies applicable to all subjects that will enable Matthew to compensate for his learning disabilities including:

- (a) assistive technology such as a speech synthesizer or computer enhanced learning programs;
- (b) "talking" books or equivalent ways to supplement and enhance reading;
- (c) an assigned aide to serve as "scribe" and help Matthew in transcription.

Plaintiff Matthew Carr: The Dispute Regarding the IEP

48. Plaintiff MATTHEW CARR is an eight year old student, born April 1, 1988 to his parents, Plaintiffs ESTHER and JAMES CARR, who resides in the Philadelphia School District (hereafter "DISTRICT" or "SCHOOL DISTRICT") and is eligible for special education and related services. First classified as learning disabled in 1992, his specific learning disabilities include problems in visual perception and processing, visual memory, auditory processing, and attention deficit disorder.

49. MATTHEW CARR's disabilities are severe and have a profound effect on his ability to learn and perform in the classroom. There is agreement between the Plaintiffs and Defendants that MATTHEW CARR's auditory processing problems appear to be more significant at this time than his visual problems.

50. MATTHEW CARR is in a full time Learning Support program at the DISTRICT in the Fox Chase School, a school serving students in kindergarten through fifth grades.

51. MATTHEW CARR has been eligible for special education services from the DISTRICT since his entry to the public schools in 1993.

52. Despite his learning disabilities, MATTHEW CARR is of average to low average intelligence. With appropriate education, MATTHEW CARR can progress in school. With appropriate education, MATTHEW CARR can learn to read, and, absent the violation of law by the DEFENDANTS, would by now have learned to read.

53. MATTHEW CARR's progress in school has been slow, remaining essentially at pre-readiness level with some limited gains toward pre-primer level.

54. In September 1995, the Plaintiffs ESTHER and JAMES CARR arranged at their own expense for MATTHEW CARR to be tutored for one hour per week in a multisensory, phonetically-based reading methodology known as the Wilson Reading System. 55. During the same school year, 1995-96, MATTHEW CARR's reading program at school was the Scientific Reading System (SRS). During the summer of 1996, approximately two and a half months, MATTHEW CARR continued solely with his private tutoring in the Wilson System. By the fall of 1996 (in October), MATTHEW CARR's test scores revealed limited progress in basic reading skills.

56. In June 1996, the District proposed an Individualized Education Program (IEP) for the next school year that specified the SRA as MATTHEW CARR's reading program. A Notice of Recommended Assignment (NORA) was also sent to the parents. The parents refused to sign the

NORA objecting to the site of the program.

57. The parents then asked that the IEP specify the Wilson System as the prescribed reading methodology. The District refused to designate the Wilson System and instead the SRA was designated for MATTHEW CARR.

58. Subsequently, a due process hearing was held under the IDEA which was comprised of five sessions and ended on December 16, 1996.

60. The issues before the Hearing Officer specifically focused on the reading system to be used, the ability of the District to implement an appropriate IEP, and whether the District had committed procedural error so as to constitute a denial of a free appropriate public education for MATTHEW CARR.

61. The Hearing Officer concluded that the District's proposed IEP was appropriate, including the goals and objectives contained therein. He ordered the District to implement the IEP without revision or modification.

62. State must provide each and every disabled child with a free and appropriate public education and this entitlement is delivered through the IEP. The written IEP must be detailed and take into account the child's abilities and special needs. It must outline goals and objectives and specify the services the child will receive. A school district's failure to offer an IEP reasonably calculated to yield educational progress.

63. This benefit cannot be trivial or minimal or it renders the IEP inappropriate

64. Measurable or observable gains and progress must result from an IEP even if the gain or progress is incremental or slow. Further, the individualized nature of the program means that educational benefit occurs as compared with the individual's own educational level and potential and not with others. There is no ban against specifying a methodology that has been proven or known to fail.

65. De minimis benefit or lack of discernible progress indicates the IEP must be adjusted or changed.

66. It is crucial that the IEP is as specific and individualized in all areas at the time that it is prepared so as to provide an appropriate educational program. The program need not be perfect. However, an IEP that is regularly reissued or provides the same program with only superficial changes as window dressing and disregards or ignores the child's lack of progress cannot pass muster and must be deemed inappropriate.

67. The Appeals Review Panel concluded, and it is the fact, that the IEP is not appropriate, and that MATTHEW CARR has derived little or no educational benefit from his program delivered by the DISTRICT:

In this case, after a careful review of the record in its entirety, the panel concludes that the

proposed IEP is inappropriate because it is not sufficiently specific and failed to provide a program reasonably calculated to yield educational progress. Simply stated, the Hearing Officer erred as a matter of law and in his findings that Matthew had made educational progress sufficient to make the IEP appropriate. The panel finds that Matthew has derived little or no educational benefit from his program delivered by the District.

Opinion at 4.

68. The Appeals Review Panel concluded, and it is the fact, that "The record in its entirety reveals that, at best, Matthew has been moving so slowly so as to be practically standing still in his educational career. Despite his average IQ (even a low average IQ), in the past three years, his progress is almost non-discernible." Opinion at 4.

69. The Appeals Review Panel concluded, and it is the fact, that "expert uncontroverted evidence indicated that in March 1995, Matthew had not acquired any sight words, could not sound out words, and could not use either pictorial or context clues in decoding." Opinion at 4.

70. The Appeals Review Panel concluded, and it is the fact, that only with the sort of IEP reading system which was sought by Plaintiffs did MATTHEW CARR make progress, and that the SCHOOL DISTRICT and INDIVIDUAL DEFENDANTS can be required to specify in the IEP the educational program which has had demonstrable success:

In contrast, the only discernible progress Matthew has made over the course of his academic experience has occurred when he is privately tutored, i.e. during the summer months in a reading system that is intensely focused, multisensory with all modalities applied simultaneously, and delivered in a learning environment that eliminates auditory and visual distraction. In Matthew's case, it is the Wilson System which has resulted in some progress in his reading skills. See NT 656 and Parent Exhibit 2. The Hearing Officer incorrectly concludes that the District cannot be ordered to provide a system that contains all of the above noted factors. There is no prohibition against specifying in the IEP the educational program which has had demonstrable success.

Opinion at 4-5.

71. The Appeals Review Panel concluded, and it is the fact, that the SCHOOL DISTRICT's program and proposed IEP ignores recommendations from experts about what MATTHEW CARR requires and "flies in the face of what the IDEA is all about" and is "adamantly ignorant of what the IDEA intends and requires."

An appropriate IEP must contain at least those components necessary for Matthew to learn and make progress in his reading skills. To order an IEP that is in known need of modification and blithely ignore the recommendations of experts about what Matthew requires flies in the face of what IDEA is all about. The intent is for children with disabilities to derive meaningful educational benefit from their schooling. This is not a case of whether Matthew should have the "best" program. It is a case of whether Matthew should have a program reasonably calculated to yield meaningful benefit. Ordering implementation of an IEP known to be lacking in specificity in light of Matthew's documented lack of educational progress is adamantly ignorant of what the

IDEA intends and requires.

Opinion at 5.

72. The effect of the Defendants' actions is to deny MATTHEW CARR any meaningful education with respect to his reading.

73. The Appeals Review Panel concluded, and it is the fact, that the Plaintiffs' requests are for those services which are necessary for MATTHEW CARR to make meaningful educational progress and must be contained in the IEP:

Therefore, the panel is persuaded by the parent's exceptions with regard to the provisions of the IEP. e.g., a multisensory reading system, one-on-one instruction by a qualified instructor in said reading system, delivered one hour per day five days per week, and in a separate area removed from visual and auditory distraction. These elements are necessary for Matthew to make meaningful educational progress and must be contained in the IEP.

Opinion at 5.

74. The Appeals Review Panel also correctly concluded that, in areas other than reading, MATTHEW CARR requires similar IEP provisions, and requires consideration of aids, and is entitled to compensatory education, such as:

2) To evaluate and provide when necessary any supplementary services or compensatory educational strategies applicable to all subjects that will enable Matthew to compensate for his learning disabilities including:

- (a) assistive technology such as a speech synthesizer or computer enhanced learning programs;
- (b) "talking" books or equivalent ways to supplement and enhance reading;
- (c) an assigned aide to serve as "scribe" and help Matthew in transcription.

Opinion at 6.

75. The Appeals Review Panel also correctly concluded that -- given the lateness in the school year of its decision -- the same protections and IEP provisions must be included in the IEP for school year 1997-1998.

Opinion at 5, note 3.

Failure to Implement the 1996-1997 IEP

76. In June, 1996, the Defendants prepared an IEP for the 1996 - 1997 school year. Independent of the violations of federal law discussed herein, the Defendants failed to implement that IEP with regard to

reading. They did not provide required one to one teaching; they did not provide a multisensory system or experience. Defendant LYNETTE MASON provided incorrect and false information, knowingly, on report cards. Defendant TROBACCO failed to participate as required by law in the development of the IEP.

77. The Defendants are also liable for violation of state law rights due to their Fraud and Misrepresentation in connection with the IEP which, even with its flaws under federal law, the Defendants failed to implement according to its terms.

VI. CAUSES OF ACTION

78. Incorporating all other elements of this Complaint, Plaintiffs set forth the following causes of action against the Defendants.

79. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for violation of the Individuals with Disabilities Education Act, in that they have failed and refused

a) to provide an appropriate IEP under said Act;

b) to obey and implement the March 12, 1997 Order of the Commonwealth of Pennsylvania Special Education Appeals Review Panel;

80. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for violation of the Individuals with Disabilities Education Act, in that they have failed and refused to obey and implement the March 12, 1997 Order of the Commonwealth of Pennsylvania Special Education Appeals Review Panel on an interim basis, pending judicial review of that decision.

81. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for violation of the Americans with Disabilities Act of 1990.

82. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for violation of the Rehabilitation Act of 1973.

83. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for violation of 42 U.S.C. §1985 in that they have conspired to violate the civil rights, constitutional and statutory, of said PLAINTIFFS, in that disabled individuals are part of a "discrete and insular" class under §1985(3).

84. Individual Defendants are liable for violation of the IDEA, and, independently, for violating a clear obligation to implement the Order of the Appeals Review Panel during the interim period of judicial review.

Defendants LYNETTE MASON, OKSANA TRABOCCO, and ELAINE WALLACE knew, as of the time the challenged IEP was created, that the IEP was deficient under the IDEA. Despite that knowledge, they maintained and implemented the IEP.

Defendants LYNETTE MASON, OKSANA TRABOCCO, and ELAINE WALLACE knew, as of the time the challenged IEP was challenged in the IEP Due Process Hearing, that the IEP was deficient under the IDEA. Despite that knowledge, they maintained and implemented the IEP.

Defendants LYNETTE MASON, OKSANA TRABOCCO, and ELAINE WALLACE knew, as of the time the Appeals Review Panel issued its decision that the IEP was deficient under the IDEA. Despite that knowledge, they refused to obey and implement the Order of the Appeals Review Panel.

Defendants LYNETTE MASON, OKSANA TRABOCCO, and ELAINE WALLACE knew, as of the time the Appeals Review Panel issued its decision, of the Order of the Appeals Review Panel. Despite that knowledge, they refused to obey and implement the Order of the Appeals Review Panel during the interim period during judicial review. Such refusal is directly contrary to the IDEA.

85. The Defendants are also liable for violation of state law rights due to their Fraud and Misrepresentation in connection with the IEP which, even with its flaws under federal law, the Defendants failed to implement according to its terms. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for fraud under Pennsylvania State Law in that they provided an IEP, promised to fulfill the IEP, and failed to fulfill the IEP, and that they thus violated the contractual terms which were embodied in the IEP, and fraudulently described, presented and acted upon the IEP.

86. The Defendants are also liable for violation of state law rights due to their Fraud and Misrepresentation in connection with the IEP which, even with its flaws under federal law, the Defendants failed to implement according to its terms. The Defendant SCHOOL DISTRICT OF PHILADELPHIA and the Individual Defendants LYNETTE MASON, ELAINE WALLACE and OKSANA OKSANA TRABOCCO, are liable to Plaintiffs ESTHER and JAMES CARR, and MATTHEW CARR for misrepresentation under Pennsylvania State Law in that they provided an IEP, promised to fulfill the IEP, and failed to fulfill the IEP, and that they thus violated the contractual terms which were embodied in the IEP, and misrepresented the nature and effect of what they were providing.

VII. PRAYER FOR RELIEF

87. Incorporating all other elements of this Complaint, Plaintiffs MATTHEW CARR, ESTHER

CARR and JAMES CARR respectfully pray that this Honorable Court grant the following relief:

Enter emergency, preliminary and permanent injunctions under the IDEA, ADA and Rehabilitation Act (or any of them), enjoining all Defendants to comply with said statutes and to obey and implement an appropriate IEP as defined by the Appeals Review Panel.

Enter emergency, preliminary and permanent injunctions under the IDEA enjoining all Defendants to comply with said statute and to obey and implement an appropriate IEP as defined by the Appeals Review Panel during the interim period of judicial review of the Appeals Review Panel Order.

Award compensatory education under the IDEA, ADA and Rehabilitation Act (or any of them), enjoining all Defendants to comply with said statutes and to provide such compensatory education.

Award compensatory and punitive damages under the IDEA, ADA and Rehabilitation Act (or any of them), and under 42 U.S.C. 1983, 1985 and 1988, for violation of Plaintiffs' rights.

Award compensatory and punitive damages for violation of Plaintiffs' rights under state law.

Award costs and attorneys' fees under the IDEA, ADA and Rehabilitation Act, 42 U.S.C. 1983, and 1988.

Respectfully submitted,

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ID 15699
215 567 2828

Attorney for Plaintiffs

¹ The panel recognizes that because the 1996-97 school year is more than halfway through, the District is advised to incorporate any changes in the 96-97 proposed IEP to the 97-98 IEP.