

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS – EASTERN DIVISION

BOARD OF EDUCATION OF OTTAWA TOWNSHIP)
HIGH SCHOOL DISTRICT 140, LASALLE COUNTY,)
ILLINOIS; BOARD OF EDUCATION OF OTTAWA)
ELEMENTARY SCHOOL DISTRICT 141, LASALLE)
COUNTY, ILLINOIS; BOARD OF EDUCATION OF)
STREATOR ELEMENTARY SCHOOL DISTRICT 44,)
LASALLE COUNTY, ILLINOIS; BOARD OF)
EDUCATION OF QUEEN BEE SCHOOL DISTRICT 16,)
DUPAGE COUNTY, ILLINOIS; T.H., A MINOR BY HIS)
MOTHER AND FATHER AND NEXT FRIEND, S.H.)
AND C.H.; S.H. AND C.H. INDIVIDUALLY; E.C.,)
A MINOR, BY HIS MOTHER AND NEXT FRIEND)
D.C.; D.C. INDIVIDUALLY; H.G., A MINOR, BY HER)
MOTHER AND NEXT FRIEND L.G.; L.G.)
INDIVIDUALLY; M.H., BY HER MOTHER AND)
FATHER AND NEXT FRIEND J.H. AND A.H.; AND)
J.H. AND A.H. INDIVIDUALLY,)

Plaintiffs,)

v.)

THE U.S. DEPARTMENT OF EDUCATION;)
MARGARET SPELLINGS, U.S. SECRETARY OF)
EDUCATION, IN HER OFFICIAL CAPACITY; THE)
ILLINOIS STATE BOARD OF EDUCATION; AND)
DR. RANDY J. DUNN, INTERIM ILLINOIS STATE)
SUPERINTENDENT OF EDUCATION, IN HIS)
OFFICIAL CAPACITY,)

Defendants.)

FILED

AUG 25 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Case No. 05 C 0655

Judge Coar

Magistrate Judge
Denlow

TO: ATTACHED SERVICE LIST

NOTICE OF FILING

PLEASE TAKE NOTICE that on August 25, 2005 I caused the attached Amended Complaint for Declaratory Relief to be filed in the United States District Court for the Northern District of Illinois, Eastern Division

WILLIAM F. GLEASON

CERTIFICATE OF SERVICE

I, WILLIAM F. GLEASON, an attorney, certify that I served a true and correct copy of this Notice and the document referred to therein upon the individuals on the attached service list by placing the same in a pre-paid properly addressed envelope and placing the same in a U.S. Postal Box in Flossmoor, Illinois, before 5:00 p.m. on August 25, 2005.



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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS – EASTERN DIVISION**

BOARD OF EDUCATION OF OTTAWA TOWNSHIP)
HIGH SCHOOL DISTRICT 140, LASALLE COUNTY,)
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MICHAEL W. DOBBINS
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AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME the Plaintiffs, the BOARD OF EDUCATION OF OTTAWA TOWNSHIP HIGH SCHOOL DISTRICT 140, LASALLE COUNTY, ILLINOIS; the BOARD OF EDUCATION OF OTTAWA ELEMENTARY SCHOOL DISTRICT 141,

LASALLE COUNTY, ILLINOIS; the BOARD OF EDUCATION OF STREATOR ELEMENTARY SCHOOL DISTRICT 44, LASALLE COUNTY, ILLINOIS; the BOARD OF EDUCATION OF QUEEN BEE SCHOOL DISTRICT 16, DUPAGE COUNTY, ILLINOIS; T.H., A MINOR, BY HIS MOTHER AND FATHER AND NEXT FRIEND, C.H. AND S.H.; C.H. AND S.H. INDIVIDUALLY; E.C., A MINOR, BY HIS MOTHER AND NEXT FRIEND D.C.; D.C. INDIVIDUALLY; H.G., A MINOR, BY HER MOTHER AND NEXT FRIEND L.G.; AND L.G. INDIVIDUALLY; M.H., A MINOR, BY HER MOTHER AND FATHER AND NEXT FRIEND J.H., AND A.H.; AND J.H. AND A.H. INDIVIDUALLY, by and through their attorneys, HAUSER, IZZO, DeTELLA & PETRARCA, LLC, and as their complaint state as follows:

PARTIES

1. Plaintiff Board of Education of Ottawa Township High School District 140 is a local public school district located in Ottawa, LaSalle County, Illinois, maintaining a system of schools in grades 9 through 12.

2. Plaintiff Board of Education of Ottawa Elementary School District 141 is a local public school district located in Ottawa, LaSalle County, Illinois, maintaining a system of schools in grades Kindergarten through 8.

3. Plaintiff Board of Education of Streator Elementary School District 44 is a public school district located in Streator, LaSalle County, Illinois, maintaining a system of schools in grades Kindergarten through 8.

4. Plaintiff Board of Education of Queen Bee Elementary School District 16 is a public school district located in Glendale Heights, DuPage County, Illinois, maintaining a system of schools in grades Kindergarten through 8.

5. Plaintiffs Board of Education of Ottawa Township High School District 140, Board of Education of Ottawa Elementary School District 141, Board of Education of Streator Elementary School District 44 and Board of Education of Queen Bee Elementary School 16, hereinafter referred to as "Plaintiff school boards", are bodies politic and corporate which may sue and be sued in all courts and places where judicial proceedings are had. 105 ILCS 5/10-2.

6. Plaintiff T.H., a minor, is a special education student in the 12th grade at Ottawa Township High School.

7. Plaintiff C.H. is the mother of Plaintiff T.H., a minor.

8. Plaintiff S.H. is the father of Plaintiff T.H., a minor.

9. Plaintiff E.C., a minor, is a special education student in the 12th grade at Ottawa Township High School.

10. Plaintiff D.C. is the mother of Plaintiff E.C., a minor.

11. Plaintiff H.G., a minor, is a special education student in the 6th grade at Central School.

12. Plaintiff L.G. is the mother of Plaintiff H.G., a minor.

13. Plaintiff M.H., is a special education student who is a 7th year senior at Ottawa Township High School.

14. Plaintiff J.H. is the mother of Plaintiff M.H.

15. Plaintiff A.H. is the father of the Plaintiff M.H.

16. Defendant U.S. Department of Education ("DOE") is the federal agency responsible for administering and implementing the *No Child Left Behind Act of 2001* ("NCLBA")(P.L. 107-110).

17. Defendant Margaret Spellings is the U.S. Secretary of Education and is responsible for the overall direction, supervision and coordination of all activities of the DOE and is responsible for administering and implementing the NCLBA.

18. Defendant Illinois State Board of Education ("ISBE") is the State agency authorized and required to establish educational policies and guidelines on the NCLBA for school districts in Illinois.

19. Defendant, Dr. Randy J. Dunn, is the Interim Superintendent of Schools for the State of Illinois and is responsible for supervising public schools in Illinois and administering and implementing the NCLBA.

JURISDICTION

20. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331.

21. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. § 2201 and §2202 because this case is a case of actual controversy within the Court's jurisdiction seeking a declaratory judgment that portions of the No Child Left Behind Act are invalid.

22. This Court has further jurisdiction over the subject matter of this lawsuit pursuant to 20 U.S.C. §1403(b).

NO CHILD LEFT BEHIND ACT

23. The NCLBA is a comprehensive education reform statute which is aimed at strengthening elementary and secondary school. 20 U.S.C. § 6301(1)-(12).

24. The purpose of the NCLBA is "to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a

minimum, proficiency on challenging State academic standards and State academic assessments.” 20 U.S.C. § 6301.

25. The NCLBA’s purpose is to be accomplished through a variety of means including, among other things, “holding schools, local educational agencies and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education.” 20 U.S.C. § 6301(4).

26. The NCLBA significantly raises expectations for States, local educational agencies, schools and students in that all students are expected to meet or exceed State standards in math and reading within 12 years (*i.e.*, no later than 2012). Under the NCLBA, each State establishes a definition of adequate yearly progress (“AYP”) to use each year to determine the achievement and progress of students within various subgroups of each school district and school. 20 U.S.C. §6311(b)(2)(C).

27. The indicators to determine AYP in the State of Illinois are:

- a. State assessment of student performance in reading and mathematics on a standardized test;
- b. Student attendance rates at the elementary school level and graduation rates at the high school level; and
- c. Participation rates on student assessment.

28. Achievement levels are applicable to the student population as a whole and for each of four demographic subgroups designated under the NCLBA: (1) economically disadvantaged students, (2) students from major racial and ethnic groups,

(3) students with disabilities, and (4) students with limited English proficiency. 20 U.S.C. §6311(b)(2)(C)(v)(II)(aa-dd).

29. In Illinois, if a subgroup has more than 40 students, the school must separate out the scores of those students, and those students as a group must meet AYP.

30. Students who have an individualized education plan, as specified under the Individuals with Disabilities Education Act (IDEA), are included in the calculation of students meeting AYP standards if there are a sufficient number of students to be labeled a subgroup.

31. Each Plaintiff school district has a sufficient number of students to create a subgroup of special education students.

32. On an annual basis, the ISBE notifies districts and schools of their status regarding AYP as well as remedial activities that are required.

33. Ottawa Township High School, located in Ottawa Township High School District 140, is in School Improvement Status and must offer School Choice.

34. Shepard Middle School, located in Plaintiff Ottawa Elementary School District 141, is in School Improvement Status.

35. All of the Plaintiff School Districts are in School Improvement Status.

36. As a result of the AYP requirement and subgroup definition, Plaintiff School Districts were put on watch status or were required to complete remediation activities solely due to the achievement scores from the special education student population.

37. If the special education student population achievement scores were excluded from the Plaintiff School Districts' calculations for purposes of making AYP, Plaintiff School Districts would all have achieved AYP.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

38. Under the *Individuals with Disabilities Education Act* ("IDEA"), 20 U.S.C. §1400 *et seq.*, all children with disabilities are entitled to a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. 20 U.S.C. §1400(d)(1)(A).

39. Special education instruction should have high expectations for disabled children in order to meet developmental goals and, **to the extent possible**, the challenging expectations that have been established for all children and to prepare them to lead productive and independent adult lives. 20 U.S.C. §1400(d)(c)(5)(A).

40. A free appropriate public education is available to all children with disabilities residing in Illinois between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. 20 U.S.C. §1412(A)(1)(a).

41. To the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled. The removal of children with disabilities from the regular education environment should occur only in cases where the nature and severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily. 20 U.S.C. §1413(e)(4)(B).

42. School districts are responsible for developing an individualized education plan (“IEP”) for each student identified with a disability. 20 U.S.C. §1414(d).

43. Each IEP must have measurable annual goals, including academic and functional goals designed to enable the child to be involved and make progress in the general education curriculum and meet each of the child’s other educational needs that result from the child’s disability. 20 U.S.C. §1414(d)(1)(A)(II).

44. On an annual basis, the IEP is reviewed to document and assess the student’s progress toward their individual educational goals and objectives and to plan for future educational programming and services. 20 U.S.C. §1414(d).

45. When conducting an evaluation for an IEP, the local educational agency shall not use any single measure or assessment as the sole criterion for determining whether a child is a child with disability or determining an appropriate educational program for the child. 20 U.S.C. §1414(b)(2)(B).

46. Furthermore, the evaluation shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 20 U.S.C. §1414(b)(2)(C).

47. Many special education students have social and physical disorders which are addressed by a significant portion of the student’s IEP.

48. The IEP goals and objectives, while aligned with the Illinois State Learning Standards, are required to reflect the needs of the individual student as they relate to his/her unique disability. 20 U.S.C. §1414(d).

REQUIRED SCHOOL ACTIONS

49. Because students such as Plaintiff students are failing to meet AYP, Plaintiff School Districts must adopt measures in an effort to improve student performance and achievement within the special education subgroup.

50. A significant portion of the teachers who teach the special education students at the Plaintiff School Districts are tenured teachers under the Illinois School Code.

51. A tenured teacher may be dismissed for incompetence only if he or she fails to complete a remediation plan with a satisfactory or better rating or if their failure is deemed to be irremediable.

52. All of the teachers who teach special education at the Plaintiff School Districts are highly qualified as measured by the Illinois State Board of Education.

53. The professional staff at each of the Plaintiff School Districts work under collective bargaining agreements which limit the amount of instructional time they are required to teach on a daily basis and the length of the school year; these working conditions cannot be changed unilaterally.

54. Both Ottawa Township High School District 140 and Ottawa Elementary School District 141 have contact with an outside expert agency who helps with specific questions regarding IEP development or other general special education matters.

55. Plaintiff School Districts have in District personnel who are experts in the field of special education.

56. The only reasonable change which Plaintiff School Districts can take in order to attempt to meet AYP is to change the curriculum of its students.

57. Changing the curriculum of students with disabilities would entail changing the IEP of special education students.

58. Ottawa Elementary School District 141 provides special education services for approximately 390 students who are disabled.

59. Ottawa Township High School District 140 provides special education services for approximately 308 students who are disabled.

60. Disability includes:

- a. Autism;
- b. Deaf-Blindness;
- c. Deafness;
- d. Emotional Disturbance;
- e. Hearing Impairment;
- f. Mental Retardation;
- g. Multiple Disabilities;
- h. Orthopedic Impairment;
- i. Specific Learning Disability (LD);
- j. Speech or Language Impairment;
- k. Traumatic Brain Injury; or
- l. Visual Impairment.

TESTING PROCEDURES

61. To determine if a subgroup of students with disabilities is meeting AYP in Illinois, the State of Illinois determined that grade school students should be administered

and must meet certain achievement standards on the Illinois Standards Achievement Test (ISAT) in grades 3, 5, and 8.

62. To determine if a subgroup of students with disabilities is meeting AYP in Illinois, the State of Illinois determined that high school students should be administered and must meet certain achievement standards on the Prairie State Achievement Examination in grade 11.

63. ISAT measures individual student achievement relative to the Illinois Learning Standards. The results give parents, teachers, and schools one measure of student learning and school performance.

64. In order to meet standards for the reading portion of the ISAT, students must be able to read grade appropriate texts fluently.

65. In order to meet standards for the mathematics portion of the ISAT, students must be able to complete grade appropriate math problems and comprehend grade appropriate math concepts.

66. The PSAE consists of three components: (a) an ISBE developed science assessment; (b) the ACT assessment, which includes reading, mathematics, English, and science tests, and; (c) two workkeys assessments.

67. The ACT assessment tests high school students' general educational development and their ability to complete college level work.

68. For students with disabilities, there exist three options with regard to taking these assessment tests:

a. participation in the regular state assessment without accommodations;

b. participation in the regular state assessment with appropriate accommodations; or

c. participation in a state-approved alternate assessment.

69. School Districts may evaluate students with severe cognitive disabilities against alternative achievement standards and may count their proficient scores in determining AYP subject to a cap of 1% of all students assessed. 34 C.F.R. §200.13(c)(ii).

STUDENT POPULATIONS

70. In Plaintiff School District 141, approximately 12% of the disabled students have significant cognitive disabilities.

71. In Plaintiff School District 140, approximately 10% of the disabled students have significant cognitive disabilities.

72. Many students in Plaintiff School District 141 are functioning at approximately 4 to 5 grade levels below non-disabled students.

73. Many students in Plaintiff School District 140 are functioning at approximately 2 to 3 grade levels below non-disabled students.

74. For example, Plaintiff H.G. has limited cognitive abilities and the most important portions of her IEP including:

- a. Direct language instruction;
- b. Behavioral instruction;
- c. Intense communication skills;
- d. Daily living skills;
- e. Community training;

- f. Physical therapy;
- g. Speech therapy;
- h. Social work.

75. Much of H.G.'s instruction is designed in order to help H.G. attempt to lead a more self-sufficient and normal life post education

76. Much of H.G.'s academic instruction is designed to assist her functionally to be able to communicate and function in the community and beyond an educational setting.

77. In order to attempt to have H.G. score proficiently on an ISAT examination, the District would be required to intensify H.G.'s educational program which would include teaching her things commensurate with a non-disabled student of her grade level.

78. Requiring more intense instruction would require some of H.G.'s other services and instruction to be reduced.

79. A reduction in H.G.'s current IEP services would cause significant harm to H.G. because she would receive less communication, daily living, speech therapy or other important functional and behavioral instruction in lieu of increase instruction.

80. Furthermore, increasing H.G.'s instructional program to make it commensurate with non-disabled children of her age would not be beneficial to her because she would not be able to cognitively recognize the skills which were being taught to her. It would essentially be the equivalent of placing a second grade student in a high school calculus class.

81. Furthermore, the increased instruction provided to H.G. would limit her ability to meet developmental goals or to be prepared to lead a productive and independent adult life.

82. There are many other students like H.G. who do not qualify to take the alternative assessment but would be harmed through a more rigorous educational program because it would take away from more important social, physical and behavioral assistance which they are receiving.

83. These students would also be incapable of comprehending many of the topics which they would be required to comprehend at a commensurate grade level in order to meet standards on the ISAT or PSAE.

84. T.H. is a learning disabled child who has a below grade level reading comprehension and other social issues.

85. With appropriate accommodations, however, T.H. is able to participate in many regular level education classes which do not require intensive reading instruction.

86. If the District was required to change T.H.'s IEP in order to provide him with more intensive reading instruction, T.H. would not be able to participate in many regular level education classes.

87. Such a change would harm T.H. because it would put him in a more restrictive environment and would harm the social gains T.H. is making in the regular education curriculum.

88. Furthermore, requiring T.H. to concentrate overwhelmingly on a subject which is difficult to him would lead to decreased self-esteem and frustration which would further hinder social and academic improvement.

89. Students such as H.G. and T.H. simply cannot make state standards as required by NCLBA regardless of changes in instructional personnel, administrative personnel and regardless of consultation with experts or increases in their instructional programs.

COUNT I

**DECLARATORY JUDGMENT THAT PORTIONS OF THE NCLBA ARE
INVALID**

90. IDEA requires that special education students be held to the challenging academic standards of all students only to the extent possible with their disability. 20 U.S.C. §1400(d)(c)(5)(A).

91. NCLB through its implementation by the U.S. Department of Education and the Illinois State Board of Education, holds all students, regardless of disability, to the same academic standard even though it is not possible for many disabled students to meet the standard. 20 U.S.C. §6311(2)(C)(i).

92. NCLB should allow for separate measurable annual objectives for continuous and substantial improvement of students with disabilities but instead measures all students on the same criteria. 20 U.S.C. §6311(2)(C)(v).

93. The remediation options required by NCLBA will not lead to students with disabilities being placed in the least restrictive environment possible nor will it lead to assisting them in becoming prepared to lead productive and independent adult lives.

94. The remediation options required by NCLBA will allow a disabled students' appropriate educational program to be determined solely on the basis of one examination result which is violative IDEA. 20 U.S.C. §1414(b)(2)(B).

95. The conflict between IDEA and NCLBA is irreconcilable as NCLBA is currently implemented.

96. The current manner in which NCLB is implemented by the U.S. Department of Education and the Illinois State Board of Education is violative of IDEA.

97. The current manner in which NBLCA is implemented by the U.S. Department of Education and the Illinois State Board of Education is harmful to special education students such as H.G. and T.H.

98. The current manner in which NCLBA is implemented by the U.S. Department of Education and the Illinois State Board of Education creates an impossible decision for the Plaintiff school boards in terms of which statutory obligations must be obeyed because both cannot be obeyed consistently.

99. This conflict is recognized by the Illinois General Assembly in Public Act 94-0666, which is subject to the approval of the federal government.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, BOARD OF EDUCATION OF OTTAWA TOWNSHIP HIGH SCHOOL DISTRICT 140, LASALLE COUNTY, ILLINOIS; BOARD OF EDUCATION OF OTTAWA ELEMENTARY SCHOOL DISTRICT 141, LASALLE COUNTY, ILLINOIS; BOARD OF EDUCATION OF STREATOR ELEMENTARY SCHOOL DISTRICT 44, LASALLE COUNTY, ILLINOIS; BOARD OF EDUCATION OF QUEEN BEE SCHOOL DISTRICT 16, DUPAGE COUNTY,

ILLINOIS; T.H., A MINOR, BY HIS MOTHER AND FATHER AND NEXT FRIEND, S.H. AND C.H.; S.H. AND C.H. INDIVIDUALLY; E.C., A MINOR, BY HIS MOTHER AND NEXT FRIEND D.C.; D.C. INDIVIDUALLY; H.G., A MINOR, BY HER MOTHER AND NEXT FRIEND L.G.; L.G. INDIVIDUALLY; M.H., BY HER MOTHER AND FATHER AND NEXT FRIEND J.H. AND A.H.; J.H. AND A.H. INDIVIDUALLY respectfully request that this Honorable Court enter judgment against Defendants to include:

- A. A declaration that 20 U.S.C. §6311 and 20 U.S.C. §6316 of the No Child Left Behind Act as currently implemented are violative of the Individuals with Disabilities Education Act;
- B. A declaration that 20 U.S.C. §6311 and 20 U.S.C. §6316 of the No Child Left Behind Act are invalid;
- C. An award of reasonable costs and attorneys' fees in connection with this action; and
- D. Any and all other relief that this Honorable Court deems just and equitable.

Respectfully submitted,

BOARD OF EDUCATION OF OTTAWA
TOWNSHIP HIGH SCHOOL DISTRICT
140, LASALLE COUNTY, ILLINOIS;
BOARD OF EDUCATION OF OTTAWA
TOWNSHIP HIGH SCHOOL DISTRICT
141, LASALLE COUNTY, ILLINOIS;
BOARD OF EDUCATION OF
STREATOR ELEMENTARY SCHOOL
DISTRICT 44, LASALLE COUNTY,
ILLINOIS; BOARD OF EDUCATION OF
QUEEN BEE SCHOOL DISTRICT 16,
DUPAGE COUNTY, ILLINOIS; T.H.;

S.H.; C.H.; E.C.; D.C.; H.G.; L.G.; M.H.;
J.H.; and A.H.

By: William F. Gleason
One of Their Attorneys

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