



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LAMAR LEGARE, a minor, by his guardian,)
Tanya Legare; MICHAEL LANE-PEARSON,)
a minor, by his mother, Joyce Pearson;)
VERSHAWN BROWN, a minor, by his)
mother, Yvonne Brown; on their own behalf)
and on behalf of all others similarly situated,)

Plaintiffs,)

v.)

SCHOOL DISTRICT OF PHILADELPHIA,)

Defendant.)

C.A. No 94-CV-4243

COMPLAINT - CLASS ACTION

I. Preliminary Statement

1. Plaintiffs in this case are the approximately 15% of Philadelphia's high school students who have a disability, such as a learning disability, sensory impairment, mental retardation, emotional problem, or the like. The issue is whether the School District of Philadelphia provides these students a fair and non-discriminatory opportunity to participate in the various specialized high school programs -- such as schools within schools, magnet programs, and special schools -- that the District makes available to its non-disabled students.

These special programs, which are rapidly proliferating throughout the system, are a key component of the District's high school improvement strategy. They offer benefits not available elsewhere in the District, and have been shown to be effective in raising academic performance levels.

Plaintiffs maintain that they are entitled to access to these specialized programs to the extent that, with special education and supplementary services, they could participate meaningfully in those programs. They also have the right to a process, defined by federal law, that ensures that their individual needs will be determined and, to the extent feasible, accommodated. However, this process is not adequately followed in Philadelphia, with the result that plaintiffs are not being fully or fairly considered for access to specialized high school opportunities.

Plaintiffs seek injunctive and declaratory relief under Section 504 of the Rehabilitation Act; the Individuals With Disabilities Education Act; the Carl Perkins Vocational Education Act; and the Americans With Disabilities Act.

II. Parties

2. Plaintiff Lamar LeGare is a 14-year-old boy who lives in Philadelphia and attends the Philadelphia public schools. He brings this action by his aunt and legal guardian, Tanya LeGare.

3. Plaintiff Michael Pearson-Lane is a 13-year-old boy who lives in Philadelphia and attends the Philadelphia public schools. He brings this action by his

mother, Joyce Pearson.

4. Plaintiff Vershawn Brown is a 14-year-old boy who lives in Philadelphia and attends the Philadelphia public schools. He brings this action by his mother, Yvonne Brown.

5. Defendant School District of Philadelphia ("the District") is a public school district established under Pennsylvania law. It receives federal funds under, inter alia, the Individuals With Disabilities Education Act, 20 USC §1400 et seq.; and the Carl Perkins Vocational Education Act, 20 USC §2301 et seq.

III. Jurisdiction

6. Jurisdiction is proper under 28 USC §1331, in that claims are asserted under the laws of the United States; under 28 USC §1343(a), in that claims are asserted under laws providing for equal rights; and under 20 USC §1415(e), in that claims are asserted under the Individuals With Disabilities Education Act.

IV. Class Action Allegations

7. Plaintiffs' claims for declaratory and injunctive relief are brought on their own behalf and on behalf of all those similarly situated pursuant to Rules 23(a) and 23(b)(2), Fed. R. Civ. P. Defendant has acted and refused to act on grounds generally applicable to the named and class plaintiffs, making appropriate declaratory and injunctive relief as to the class as a whole.

8. The class represented by the named plaintiffs is composed of all students with disabilities who are enrolled in, or may in the future be enrolled in, the Philadelphia School District, and who are of high school age. For purposes of this case, students are considered to be of high school age if they are of an age at which the District permits non-disabled students to enroll in or apply for admission to high school programs. On information and belief, this class consists of several thousand individuals; hence, joinder of all members is impracticable.

9. There are questions of law and fact in common between the named plaintiffs and the members of the class they seek to represent, e.g., whether defendant's procedures afford students with disabilities equal access to specialized high school programs and, if not, whether such procedures violate applicable law.

10. The claims of the named plaintiffs are similar to those of the class that they seek to represent, in that all maintain that defendant's procedures do not adequately take into account the extent to which, with special education and supplementary services, plaintiffs could participate meaningfully in specialized programs at the high school level. Accordingly, the claims of the named plaintiffs are typical.

11. The named plaintiffs will adequately represent and protect the interests of the class. Counsel for the named plaintiffs are experienced in federal class action litigation and will vigorously pursue this action in the interest of the class.

V. Facts

12. Specialized high school opportunities in the Philadelphia School District.

The Philadelphia School District currently provides a range of special educational opportunities for high school students. Besides the traditional option of placement at the neighborhood "comprehensive high school," the possibilities include:

- a. Placement at a comprehensive high school in another neighborhood.
 - b. Placement in a small, specialized program within either the neighborhood comprehensive high school or a comprehensive high school outside the home neighborhood. These programs are often described as "academies," "charters," "magnet programs," or "motivation programs." Most of these programs are essentially "schools within schools," organized around a theme such as communications, business, hospitality, health, science and technology, or human services.
 - c. Placement in a special school. These include area vocational-technical high schools, such as Bok, Dobbins, Mastbaum, and Saul; and "magnet" schools, such as the High School for International Affairs, Central High School, the High School for Girls, and the High School of Engineering and Science.
13. In recent years, the number of specialized options at the high school

level has greatly increased. This is in part because, with major assistance from the Pew Charitable Trusts, the District decided to adopt the "charter" -- i.e., school-within-school -- model as a central strategy for high school improvement. The theory behind this decision was in part that student performance at the secondary level would improve if instruction were provided in smaller educational and social units, organized around a common theme, and consisting of a cohesive set of students and teachers.

14. To this end, the District has devoted considerable effort to creating new charters. For example, between 1988 and 1993, the number of charters grew from 30 (serving 12% of all students in comprehensive high schools) to 110 (serving 61%).

15. Moreover, as already noted, charters are not the only special programs available at the high school level. The District also operates other schools within schools, such as high school "academies" (providing integrated academic and vocational instruction), magnet programs (providing specialized courses of study), motivation programs (designed to help prepare students for higher education), and magnet schools. These programs and schools account for an additional, substantial percentage of student enrollment at the high school level.

16. These various special programs offer students benefits not available elsewhere. For example, research indicates that students assigned to "charters" are more likely to succeed than peers who are placed in the regular program in comprehensive high schools. Similarly, students assigned to academies, motivation programs, magnet programs, and magnet schools tend to show a higher level of

performance than peers in comprehensive high schools. In some instances, moreover, even the opportunity simply to transfer to the regular program in a high school outside of the student's home neighborhood results in educational benefits.

17. Procedures by which students gain access to special high school opportunities. Each year, the District publishes and distributes a booklet describing the range of available high school options. The District also holds a "high school fair" at which representatives of high schools are available to discuss their programs with students and their families.

18. The process by which a student applies for admission to charters, magnet programs, academies, and other specialized programs and schools varies with the type of program. Typically, however, applications are made during the student's eighth-grade year; the programs to which the student has applied then make their decisions, using their own admissions criteria. Applications are also subject to certain general rules concerning desegregation within the District.

19. How students with disabilities fit into this picture. Philadelphia has several thousand students at the high school level who have been identified as having a disability, such as a learning disability, a social/emotional disturbance, a sensory impairment, mental retardation, or other disability.

20. Legally, a student with a disability is entitled to equal access to those special programs that are available to his or her non-disabled peers at least to the extent that, with special education and supplementary services, s/he could participate

meaningfully in those programs.

21. Thus, for students with disabilities, the application procedures for special schools and programs must be designed to take into account whether, with special education and supplementary services, the student could participate meaningfully in the programs to which s/he seeks admission.

22. Moreover, these procedures must be individualized. This is because the special services that a student with a disability will require depend both on the student and on the nature of the program.

23. For example, a student with a learning disability might need extensive special help in a heavily language-based "law and justice" charter; but might need less support, or a different kind of support, in a music program that placed less emphasis on written material. A student with an emotional disturbance who entered a health academy might, depending on his or her educational levels, need extensive counseling but relatively little academic support. A student with mental retardation in a vocational school might need extra help in mathematics but have little need for counseling. Finally, a student with disabilities might be unable to participate meaningfully in a particular school or program, even with special education and supplementary services; in such circumstances, that program or school would be ruled out for that student, and another option would be sought.

24. For these reasons, federal and state special education laws require individualized decision-making with respect to the placement of children with

disabilities. In particular, the decision as to the types of special education and supplementary services, if any, that the student would require in order to participate meaningfully in a program must be made by a multidisciplinary team on the basis of an evaluation. The team must include, among others, persons knowledgeable about the child, the meaning of the evaluation data, and the placement options available. The student and his or her parents also have the right to participate on the team.

25. Philadelphia's implementation of these requirements. The District does convene periodic team meetings with respect to students needing special education, including those enrolled in, or preparing to enroll in, high school. However, these teams do not routinely include staff knowledgeable about specialized high school opportunities.

26. Often, members of the team do not know that they have the authority, and the duty, to determine what special education services and supplementary services the student needs in order to participate in such a program; or that they have the authority to decide that, in fact, the child should be placed in a particular specialized program.

27. As a result, the issue of the student's access to specialized high school opportunities is frequently not discussed, much less decided, by the special education team.

28. Moreover, the timing of the special education team meeting is often at odds with the District's schedule for processing applications to specialized programs,

with the result that, by the time the team meeting occurs, the deadline for applying for such programs has passed.

29. In addition, the booklet that the District publishes each year listing special high school options does not mention that these programs are open to students with disabilities, does not indicate the types of supplementary services that may be available to such students, and does not explain the role of the special education team in the placement process. Moreover, the personnel who staff the high school fair, which the District uses to inform students and families about its specialized programs, are often not knowledgeable about issues affecting students with disabilities.

30. Furthermore, several of the District's special schools and programs have traditionally served no, or virtually no, students with disabilities. Typically, personnel attending special education team meetings do not even raise the possibility that a student with a disability might be placed in one of these schools or programs.

31. Finally, some of the District's special programs and schools have adopted admission criteria, such as standardized test scores, that operate in such a way as to exclude students with disabilities, regardless of whether, with specialized instruction and supplementary services, they could participate meaningfully in those programs.

32. For all of these reasons, some students with disabilities do not have an opportunity for consideration for special programs and schools that is equal to that afforded their non-disabled peers; and some students are deprived of their right to

individualized placement decisions made in the manner required by law.

33. At this point, there is a significant underrepresentation of students with disabilities in the special programs and schools that Philadelphia operates at the secondary level.

34. For example, for 1992-93, students with disabilities who were in special education programs for a quarter of their day or more constituted approximately 17% of the total ninth-grade population. However, they made up only 10% of all students assigned to charters, and constituted only 6% of students actually taking at least three courses within their assigned charter. The figures for participation in academies, motivation programs, and magnet programs were substantially lower; for example, only about 3% of the students assigned to academies were special education students.

35. Lamar LeGare. Lamar LeGare is a 14-year-old boy who attended eighth grade at the Shoemaker Middle School during the past school year, 1993-94. He is classified as having a social/emotional disturbance and is assigned to a learning support class. Among his interests are fixing things, carpentry, and karate.

36. Lamar's aunt and legal guardian, Tanya LeGare, is concerned that Lamar is not doing well in school. Her impression is that Lamar feels unmotivated. She thinks he needs a curriculum that will hold his attention.

37. Last fall, Ms. LeGare talked with Lamar about the sort of high school program that would interest him. They decided that he should apply to two of the District's vocational schools -- Bok and Dobbins.

38. Ms. LeGare completed the necessary transfer application forms and returned them to Shoemaker in October, 1993, well before the due date.

39. About six months later, in May, 1994, Ms. LeGare realized that she had never had a response to Lamar's application for a vocational program. Several phone calls later, she discovered that the application had never left Shoemaker. According to the chairperson of special education at Shoemaker, this was because Shoemaker staff had decided the previous fall that Lamar was not mature enough to attend a vocational school, and had never forwarded his application for processing.

40. As a result, Lamar's application was never considered by Bok or Dobbins, and he has been referred for the fall of 1994 to his neighborhood high school, Overbrook.

41. Shoemaker's decision against seeking a vocational placement for Lamar was not made as part of any special education team process, nor were Ms. LeGare or Lamar consulted.

42. A special education team meeting was held concerning Lamar in the spring of 1993. However, the issue of possible high school placements for Lamar was not addressed. Indeed, it could not be addressed, since the only participant at the conference (other than Ms. LeGare) was Lamar's middle school teacher, who was unfamiliar with high school opportunities.

43. Another team meeting concerning Lamar was held recently, in June, 1994. Again, however, the issue of possible high school options for Lamar was not

addressed; and again, the only participant other than Ms. LeGare and her advocate was the middle school teacher, who had no information on high school opportunities.

44. Throughout this process, Lamar has been provided with no meaningful guidance or counseling, from a person qualified in meeting the needs of students with disabilities, concerning his high school options.

45. Michael Pearson-Lane. Michael Pearson-Lane is a 13-year-old boy who was enrolled in eighth grade at the Beeber Middle School during 1993-94. He is considered to have a learning disability and is assigned to a learning support class.

46. Several years ago, when Michael was doing poorly in school, his mother, Joyce Pearson, fought hard to get him into a special education program. His school performance has improved significantly, she believes as a result. This summer, in fact, he is attending a special mathematics program at Temple University, operated by the University and the School District, and is doing well. Ms. Pearson is concerned that he continue to experience success.

47. In September, 1993, Ms. Pearson attended a "back to school night" at Beeber. She and other parents of eighth-graders were asked to stay after the meeting, which she did. School personnel told her about the high school fair to be held in October, and suggested that she attend in order to find out about alternative high school options for their children.

48. Ms. Pearson attended the fair and spoke with representatives of a number of schools. She told them that her son was especially interested in computers

and in communications. She also explained that he was in a special education program. Several school representatives with whom she talked encouraged her to apply to their programs for Michael.

49. Ms. Pearson obtained the proper forms and returned them to Beeber before the transfer application deadline. She indicated on the forms that she sought admission for Michael to the Carver High School for Engineering and Science, which has a computer program; the Franklin Learning Center, which has a communications technology program; and Roxborough High School, which has a "communications corps" program.

50. Beeber approved and signed the transfer application form and forwarded it for processing.

51. Ms. Pearson heard nothing until May, 1994 -- over five months later. At that time, she received from Beeber a copy of a form letter that it had received in late April from the Office for Senior High Schools, returning Michael's application. Three reasons were given: the application did not indicate the specific programs (as opposed to the schools) to which Michael sought admission; "there is no MDE/IEP documentation [i.e., documentation from the special education team] to support the appropriateness of the program(s) requested;" and "records are incomplete."

52. At that point, it was too late to resubmit the application.

53. Neither last year's special education team meeting (held in April, 1993), nor this year's (held in April, 1994), addressed the issue of alternative high school

placements for Michael, probably because the personnel who attended those conferences were not knowledgeable about alternative high school options.

54. Throughout this process, Michael has received no guidance or counseling from knowledgeable persons concerning his high school options.

55. Ms. Pearson has been told that, as a result, Michael will be attending Overbrook High School, his neighborhood school, in the fall.

56. Vershawn Brown. Vershawn Brown is a 14-year-old student who has a learning disability. During 1993-94, he attends eighth grade at the Alternative School for the Middle Years - Northwest (AMY-NW).

57. In the spring of 1993, a special education team meeting was held concerning Vershawn. However, there was no discussion of possible high school options for him.

58. In the fall of 1993, Vershawn and his mother, Yvonne Brown, made their own effort to identify possible special options for Vershawn in ninth grade. They decided to apply to Abraham Lincoln High School, where there is an environmental technology academy; Roxborough High School, which has a program known as "careers/auto pathway;" Saul High School of Agricultural Science; and the Parkway Program, which emphasizes community-based learning experiences.

59. Ms. Brown filled out the appropriate EH-38 forms in a timely manner. They were signed by the principal of AMY-NW and forwarded for processing.

60. Ms. Brown never heard back from two of the schools to which she

applied. The third told her, when she called, that some required information had been missing. The fourth told her that Vershawn was on a waiting list.

61. It was not until a meeting in June, 1994, that Vershawn's special education team finally discussed possible special programs for him for ninth grade, and then only at the urging of Ms. Brown, her husband and her advocate.

62. At this point, it remains unclear whether Vershawn will actually be offered placement in any of the special programs to which he applied for the coming fall.

63. Further allegations. The practical effect of defendant's acts and omissions, as described above, is to exclude named and class plaintiffs from full consideration for specialized high school options in which, with special education and supplementary services, they could meaningfully participate; and, therefore, to deny them opportunities that are equal to those provided to non-disabled peers.

64. While all students can benefit from special high school programs, students with disabilities are in especially urgent need of such opportunities if they are to have a chance of achieving independence and self-sufficiency.

65. Plaintiffs have no adequate remedy at law.

66. Because the District's procedures are insufficient to ensure compliance with applicable law, and because the violations alleged herein are systemic in nature, adequate administrative remedies are not available and exhaustion is not required.

VI. Claims

67. By failing to ensure, with respect to named plaintiffs and each member of the plaintiff class, that consideration is given to placement in the full range of specialized high school options; that the student and his or her family are provided with adequate information and guidance concerning those options; and that a proper determination is made concerning the nature of the special education and supplementary services that the student needs in order to participate meaningfully in such programs, the District has:

- a. Discriminated against named plaintiffs and the plaintiff class in violation of Section 504 of the Rehabilitation Act, 29 USC §794, 34 CFR §§104.4, 104.34;**
- b. Violated their rights under the Carl Perkins Vocational Education Act, 20 USC §§2328(a), 2328(b), 2328(c), 2342(c)(1)(C), 2343(5);**
- c. Violated their rights under the Individuals With Disabilities Education Act, 34 CFR §§300.533, 300.550(b);**
- d. Discriminated against them in violation of the Americans With Disabilities Act, 42 USC §12132, 34 CFR §35.130.**

68. By maintaining admissions criteria and procedures for some specialized schools and programs that operate to exclude plaintiff class members, regardless of whether, with special instruction and supplementary services they could participate

meaningfully in such schools and programs, the District has violated the requirements set forth in the preceding paragraph.

VII. Relief

69. WHEREFORE, plaintiffs request that this Court enter preliminary and permanent injunctions requiring that defendant:

- a. Ensure, with respect to named plaintiffs and each member of the plaintiff class:
 - i. The student and his or her family are provided with adequate and timely information concerning the full range of specialized high school opportunities, including descriptions of each and of the types of special education and supplementary services that are available to assist students with disabilities within those programs; and information concerning the procedures by which a student with a disability may gain access to such programs and to the special services that s/he requires in order to participate in them.
 - ii. The student and his or her family are provided with timely guidance, from persons knowledgeable about the District's specialized high school options and about the needs of

students with disabilities, concerning the above matters.

- iii. The student and his or her family are afforded an opportunity to make choices concerning high school placement that is equal to that afforded to non-disabled students.
- iv. The determination of whether, with special instruction and supplementary services, the student could participate meaningfully in specific high school programs, and the determination of the nature and extent of those services, are made by a properly constituted special education team, following procedures prescribed by law.
- v. The determinations of the team are, in fact, implemented; and, if additional resources are required in order to provide the special education and supplementary services required by class members, these resources are made available.
- vi. No special high school or program is permitted to exclude the student through the use of admissions procedures or criteria that fail to take into account whether, with special instruction and supplementary services, the student could participate in such school or program.
- vii. District staff who are involved with the high school

admission and placement process are fully informed concerning the rights of students with disabilities, the procedures required to be followed with respect to such students, the range of high school opportunities available to such students, and the types of special education and supplementary services available to them within the District's specialized high school schools and programs.

- b. Grant such other and further relief as may be appropriate.
- c. Award plaintiffs their costs and attorney's fees.



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

CASE MANAGEMENT TRACK DESIGNATION FORM

LAMAR LeGARE, et al. : CIVIL ACTION
: :
v. : :
: :
SCHOOL DISTRICT OF PHILADELPHIA : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (X)

7/12/94
(Date)


Attorney-at-law

Plaintiffs

Attorney for